



Agenda

October 7, 2010 – 4:00 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

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@pbcgov.org

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

Executive Director
Alan S. Johnson

Administrative Assistant
Gina A. Levesque

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 2, 2010
- V. Processed Advisory Opinions
 - a. RQO 10-016
 - b. RQO 10-022
- VI. Proposed Advisory Opinions
 - a. ROQ 10-013
 - b. RQO 10-015
 - c. RQO 10-018 version 1
 - d. RQO 10-018 version 2
 - e. RQO 10-020
 - f. RQO 10-021
 - g. RQO 10-023
 - h. RQO 10-024
 - i. RQO 10-026
- VII. Complaints
 - a. C 10-004
 - b. C 10-005
- VIII. Public Comments
- IX. Workshop Items
 - a. Email Domain Names
 - b. Press Releases/Releasing Documents to the Press
- X. Executive Director Comments
 - a. BCC Waivers
 - b. Consideration of Code Revision
 - c. Staff Update
- XI. Adjournment

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. CALL TO ORDER: September 2, 2010, at 4:03 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Dr. Robin Fiore
Ronald E. Harbison
Bruce Reinhart, Esq.

STAFF:

Tammy L. Gray, Public Affairs Department Informational Specialist
Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director
Gina A. Levesque, COE Administrative Assistant
Heather C. Shirm, Public Affairs Department Web Design Coordinator
Julie Burns, Deputy Clerk

III. CHAIRMAN'S INTRODUCTORY REMARKS

Judge Edward Rodgers reminded everyone to turn off their cell phones, and he added that public comments would be accepted for two minutes or less.

IV. APPROVAL OF MINUTES FROM JULY 15 AND AUGUST 5, 2010

Dr. Robin Fiore asked that the following portion of the July 15, 2010, minutes on page 7 be stricken for the lack of clarity:

Dr. Fiore stated that she was fine with editorializing conflicts of interest because an opinion was being made in understanding the statement, and it was unnecessary to interpret the policy in accordance with the code.

Judge Rodgers replied that the statement would be stricken.

IV. – CONTINUED

Bruce Reinhart requested that wherever internal audit COE was referenced on pages 5, 6 and at the top of page 7, that it be changed to internal audit committee.

Judge Rodgers responded that the change would be made.

Mr. Reinhart requested that the language on page 10, the next to the last paragraph, be changed to show that he said, “unless a violation was uncovered, quid pro quo could apply.” He said that his recollection of his comment was, even if no violation of the ethics code occurred, it could still potentially be prosecuted if there were a quid pro quo.

Judge Rodgers stated that the minutes clerk would make the corrections.

MOTION to approve the July 15, 2010, minutes as amended. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

MOTION to approve the August 5, 2010, minutes. Motion by Manuel Farach, seconded by Dr. Robin Fiore, and carried 5-0.

V. WEBSITE PRESENTATION

Alan S. Johnson, COE Executive Director stated that the COE Web site, palmbeachcountyethics.com, was now online.

V.a. Heather Shirm

Public Affairs Department Web Design Coordinator Heather C. Shirm stated that:

- Visiting the Web site, pbcgov.com/ethics, or clicking “report ethics violations” on the County’s Web site homepage would also direct someone to the COE’s Web site.

V.a. – CONTINUED

- The COE's Web site homepage included a mission statement and a welcome statement from Mr. Johnson.
- The last recorded meeting would post to the Web site within 24 to 48 hours after a meeting's conclusion.
- The next meeting would be posted on the Web site, and previous agendas and minutes could be viewed under the meeting schedule and minutes link.
- The Rules of Procedure, the Bylaws, the Palm Beach County Ethics Pledge, the County's Code of Ethics (Code), and some of the Grand Jury reports that were released in 2009 and 2010 would be published on the Web site.
- The training link was launched earlier this year for advisory board members, the COE, and employees.
 - The training was required for all advisory board members and employees.
- Archived COE videos, taped training sessions, and PowerPoint presentations would be posted under the multimedia link.
- Links to related offices would be posted under helpful links.
- The resources link published various ordinances, the ethics complaint form, and a speaker request form.
 - The formal ethics complaint form could not be submitted electronically because it needed to be notarized.
- The "About Us" link listed each COE member, along with a picture and a biography.
 - The hiring process was continuing so the "Meet the Staff" link was not completely populated.

V.a. – CONTINUED

- All opinions that were reviewed at COE meetings and any final orders that were issued on complaints would be uploaded onto the opinions link.
- Individuals could call, email or write a COE member, or contact the inspector general on the “Contact Us” link.
 - The ethics complaint form and the speaker request form were also listed.
- Construction of the COE Web site thus far was considered to be Phase I.
 - Staff was working on a searchable library to enable keyword searches.
 - It was anticipated that the searchable library would be implemented by early 2011.

Mr. Johnson clarified that:

- Training, videos and DVDs were ongoing processes.
- The COE would phase out the County’s training videos and replace them with COE staff.
- The Code needed to be updated.
 - The process would begin September 13, 2010, with a live, taped training session regarding Code amendments that were recommended by the COE.
- In the near future, the COE would partner with colleges and the Dreyfoos School of the Arts to implement animation on the COE Web site.

V.b. Relationships with Non-Profit Organizations

Mr. Johnson stated that:

- Although the Web site, cityethics.org, was a 501(c)(3) nonprofit organization, it sold services as a consultant to start ethics initiatives, or assisted in ethics initiatives.

V.b. – CONTINUED

- Cityethics.org was removed from the COE Website.
- It would be appropriate to discuss whether those types of organizations should be included on the COE Web site.

Ronald Harbison suggested that linking an organization, such as Leadership Palm Beach County (LPBC), to the COE's Web site would be appropriate because they shared the common goal of education. He disclosed that because he was the president of LPBC, he would recuse himself from any vote. He added that the COE would have a link on the LPBC's Web site.

Mr. Reinhart stated that he supported linking any non-selling community organization or entity that endorsed the ethics initiative.

Manuel Farach suggested that Mr. Johnson, as executive director, could initially decide without first bringing it before the COE whether organizations fell under a category where special scrutiny was needed.

Mr. Johnson stated that:

- LPBC would be an appropriate addition to the COE's Web site, but it was different from the COE's existing Web site links.
 - The existing COE Web site links were for informational purposes.
 - Cityethics.org was originally linked to the COE's Web site because they had a unique database.
 - Discussions were ongoing with cityethics.org staff to attempt replication of their Web site's information onto the COE's Web site.

Dr. Fiore said that Mr. Johnson should not be required to respond to each vendor that sold ethics services or each organization that sought contracts if the COE reached a consensus regarding the issue.

PUBLIC COMMENT: Gale Howden.

Mr. Farach disclosed that he was also an LPBC member.

V.b. – CONTINUED

Mr. Johnson clarified that there would not be a voting conflict because there was no financial interest; but Mr. Farach stated that he would abstain from voting.

PUBLIC COMMENTS: Suzanne Squire and Alexandria Larson.

Mr. Johnson clarified that:

- The items that Ms. Larson referenced were backup, supporting documents to the COE agenda.
- All backup materials, which were not available to the public, would now be posted on the COE Website.

Mr. Reinhart stated that Ms. Larson's comments and concerns about waivers and advisory board memberships dealt with a political matter between the voters and the Board of County Commissioners (BCC) instead of the COE. He added that the COE merely enforced the BCC's ordinances.

Judge Rodgers stated that he would not object to having a one-on-one discussion with Ms. Larson.

VI. ADVISORY OPINIONS

Mr. Johnson stated that:

- Proposed opinion letters that were not finalized by a COE vote would depict a watermark with the word, proposed, on the letter.
- The proposed opinion letters would be posted to the COE Web site, and the COE members would receive copies of them at the same time the agenda was prepared.

Dr. Fiore stated that proposed opinion letters posted to the COE Web site should not be written on letterhead to avoid being reproduced as a document for other purposes; Mr. Johnson said that he agreed.

Mr. Reinhart said that he was in agreement as long as the proposed opinion letters contained the watermark.

VI.a. RQO 10-012

Mr. Johnson stated that:

- On July 29, 2010, Commissioner Marcus asked whether friends of her daughter and son-in-law could participate in future fundraising events to benefit her son-in-law in order to defray medical expenses.
- Commissioner Marcus had previously submitted a request for an advisory opinion to the State Commission on Ethics.
 - The State's COE opined that as long as she would not financially benefit and she did not participate in solicitations, the fundraiser would not violate the State Code of Ethics, Chapter 112.
- The County had a similar ordinance, and the gift law had already been examined for another advisory opinion.
- As long as Commissioner Marcus did not participate in the fundraiser, he recommended adoption of the letter, since it would not be a Code violation.
- Should Commissioner Marcus encounter a vendor that had contributed to the fundraiser, she should state that it would be inappropriate to continue the conversation.

Mr. Farach stated that he would like to see stronger language in Article VIII., section 2-443, of the Code. He suggested that Commissioner Marcus advise those individuals who were involved in the fundraiser that her name could not be used in any way, or for any purpose.

Mr. Johnson stated that language would be added to Request for Opinion (RQO) 10-012's final opinion reflecting the language suggested by Mr. Farach.

MOTION to approve the proposed opinion letter as amended to include the change as discussed. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

VI.b. RQO 10-013

Mr. Johnson stated that:

- The County's Department of Airports (DOA) requested an opinion as to whether a conflict of interest existed if the Aviation and Airports Advisory Board (AAAB) participated in a voting recommendation to the DOA regarding a fuel flowage fee at the three County general aviation airports when AAAB members owned aircraft and purchased airport fuel.
- The COE staff had received emails from August 4, 2010, to August 16, 2010, which provided supplemental information regarding general aviation fuel flowage, hangar space, tenants, and airport operations.
- The COE staff conducted substantial inquiry on how the airports functioned, how many airplanes flew in and out of the airports, and the amount of fuel that was sold; the gathered information was added to RQO 10-013.
 - Providing the factual information was important in helping the COE reach a conclusion whether there would be a personal or financial benefit to the AAAB members as opposed to a shared benefit with like members of the general public.
- The issue before the COE would be whether the AAAB recommended a "no" vote on the fuel flowage fee; and the specific language on page 1, paragraph 3, of the proposed opinion letter was based on the premise that the AAAB would recommend a "no" vote on the fuel flowage fee.

Mr. Harbison stated that to say that there should not be scrutiny on a "yes" vote and scrutiny on a "no" vote was not entirely accurate, and he questioned whether materiality should be taken into consideration.

Mr. Johnson responded that:

- The issue was not the amount of a gain or loss. The issue was:
 - Whether there was a gain.

VI.b. – CONTINUED

- Whether the class or group of people that received a gain or a financial benefit was shared with similarly situated members of the general public and what the COE's definition of similarly situated members of the general public was for purposes of ordinance construction.
- The point at which that class or group of people who would receive a gain or a loss become a large enough group that there would not be a specific individual financial gain or loss.
- The State's COE viewed one percent of a class or group of people as a benchmark for the number of people who had to be similarly situated in the community.

Mr. Farach commented that it was more of a numerical benchmark as opposed to a material benchmark.

Mr. Johnson said that it was how many people constituted a class or group.

Dr. Fiore stated her disagreement that it was the amount of fuel that was used by the AAAB members compared to the amount of fuel that was used by other individuals.

Mr. Johnson stated his agreement that in the consideration, if one person in the similarly situated group gained more than others, then that was another benchmark to determine whether that person had a conflicting financial interest.

Mr. Farach stated that he was comfortable with the State COE's one percent numerical requirement as long as staff included the opinion that notwithstanding meeting the State COE's one percent requirement, there was no financial benefit to that particular public official.

Mr. Reinhart commented that the COE would be looking at whether the benefit to any individual AAAB member was disproportionate to the benefit of other similarly situated members of the general public.

Dr. Fiore stated that she agreed with Mr. Reinhart's comment without the COE concluding that there was no conflict of interest because the COE did not have enough evidence.

VI.b. – CONTINUED

Mr. Johnson suggested that he could ask the DOA to research whether the AAAB had any records regarding how much fuel they had purchased at the three airports in the last year, and he read the following proposed language change to RQO 10-013's summary:

In summary, it is the opinion of the Ethics Commission that an affected class in excess of 600 persons is of sufficient size to disburse the financial benefit or loss among similarly situated members of the general public, provided there are no circumstances unique to the individual officials, which would enable any of them to gain more than the other members of the class.

Mr. Farach suggested that the proposed language could be expanded to say, "and there is no financial benefit to the official."

Mr. Johnson stated that the proposed language would need to say, "no greater benefit."

Mr. Reinhart stated that he would agree to issue the opinion as written and discussed, but he was unsure whether it provided any useful guidance to the AAAB members.

Mr. Johnson asked whether the following proposed language change to RQO 10-013 would be appropriate:

Provided there are no circumstances unique to the individual officials, which would enable any of them to gain more than the other members of the class, and there is no disproportionate gain to any of the board members.

Mr. Reinhart suggested that the sentence in RQO 10-013 which began, "Therefore, there is no voting conflict..." be stricken and the following language be added: "Based on the facts presented to us, we cannot render an opinion as to whether any current member of the board has a conflict."

Judge Rodgers asked whether the opinion letters could each include a statement that read: "These opinions are based upon the factual basis as presented at this time."

VI.b. – CONTINUED

Mr. Johnson suggested the following proposed language change to the last page, last paragraph of RQO 10-013:

This opinion construes the Palm Beach County Code of Ethics ordinance and is based only upon the facts as presented by your request.

Dr. Fiore asked whether the sentence on page 1 of RQO 10-013 that said, “We opine that the class is of a sufficient size so as not to create a prohibited voting conflict” would be stricken.

Mr. Johnson responded that that proposed language would change to comport with the summary language, and he read the following proposed language:

Based on the facts submitted, we are unable to render an opinion on the individual board members as to whether in their circumstances they will obtain a disproportionate benefit by their vote.

Mr. Farach commented that it would be advantageous to send the message that everyone requesting an opinion should not expect to wordsmith that opinion request, then return to the COE and say, “There’s no violation here because you rendered an advisory opinion.”

Mr. Johnson clarified that:

- Laura Beebe, the Airports Business Affairs Deputy Director who requested the opinion on behalf of the DOA, was not wordsmithing.
- If the COE needed additional information regarding an opinion request, only the person requesting the opinion should provide that information.

Mr. Johnson reviewed the following proposed changes:

- The sentence on page 1, which began with the words, “In sum,” would be changed to comply with the amended verbiage regarding the summary on the last page, which began with the words, “In summary.”

VI.b. – CONTINUED

- The sentence on the last page of RQO 10-013 which began with the word, “Therefore,” would be stricken, and the following proposed language would be added:

Based on the facts submitted, the Ethics Commission is unable to render an opinion on the individual board members as to whether, in their circumstances, they will obtain a disproportionate benefit by their vote.

Dr. Fiore suggested that it should read, “For any individual board member.”

Mr. Johnson stated that:

- The last portion of the previously read proposed language would be changed to, “by the vote of that board member.”
- All opinion letters will contain the following standard language:

This opinion construes the Palm Beach County Code of Ethics ordinance and is based only upon the facts and circumstances as presented to the commission.

- Arrangements would be made to display markups on a computer at the next meeting for the viewing public.

MOTION to approve the proposed opinion letter as amended to include the changes as discussed. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VI.c. RQO 10-014

Mr. Johnson stated that:

- The person requesting the opinion had asked in an August 5, 2010, email whether she, as a County library employee, could present a 30-minute program for a library patron’s child’s third birthday party.
 - The employee’s initial request stated that she had been offered payment, which she had declined; and she requested an opinion as to whether she could perform the program for free.

VI.c. – CONTINUED

- The request was ultimately withdrawn by the employee because she decided not to present the program.
- In a previous COE meeting, a determination was made that an opinion request could not be withdrawn once it was made.
- It was his recommendation that no conflict existed.
- During a previous discussion with Dr. Fiore, she had expressed concern that the proposed opinion did not state that the program could not take place during work hours.
 - It was proposed that the following language could be added to page 2 of RQO 10-014, at the end of the paragraph which began with the word, “Clearly.”

As in any outside employment, participation must be during off-duty hours and not affect the faithful performance of your County job.

- The person who had requested the opinion would have performed the program during off-duty hours.

Mr. Farach commented that he did not want the opinion’s language giving anyone the impression that participating in an event could not take place during work hours if it benefited the County and the supervisor approved it.

Mr. Reinhart suggested adding the following language to page 2 of RQO 10-014, at the end of the sentence which began, “It should be noted that”: “Nor have you indicated that it would be performed during work hours.”

There was a consensus that Mr. Reinhart’s proposed language would replace the previously proposed language.

MOTION to approve the proposed opinion letter as amended to include the changes as discussed. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

VI.d. RQO 10-017

Mr. Johnson stated that:

- Lisa DeLaRionda, Public Affairs Director, had sent in an opinion request stating that she had been invited to teach a four-hour public relations class at the Florida Association of Special Districts' (FASD) annual conference.
- The opinion request centered on whether the FASD could pay for her overnight stay at the conference.

Mr. Johnson added that the FASD was not a lobbyist, and staff had recommended that Ms. De La Rionda be allowed to accept the hotel accommodations from the FASD.

MOTION to approve the proposed opinion letter. Motion by Dr. Robin Fiore, and seconded by Bruce Reinhart.

Mr. Johnson stated that:

- Ms. DeLaRionda was not being provided a personal benefit, and it was unclear whether the FASD would reimburse her for the hotel accommodations, or they would pay the hotel bill directly.
- Ms. DeLaRionda was not being paid to teach the class.

Mr. Johnson suggested that the following language could be added to page 1, the last paragraph of RDO 10-017:

Based on the facts and circumstances provided, you will not be receiving any financial benefit for your lecture.

Mr. Farach commented that any financial benefit should go to the County, and Mr. Reinhart suggested changing the proposed language to, "personal financial benefit."

AMENDED MOTION to change the language as proposed by Mr. Reinhart.

The maker and the seconder agreed to the amended language, and upon call for a vote, the motion carried 5-0.

VI.d. – CONTINUED

Mr. Reinhart requested that items VII.a. and VIII. be tabled until the next meeting and that item VII.b. be presented at this time.

VII. RULES OF PROCEDURE & BY-LAWS

VII.a. Permanent Adoption of Interim Rules & By-Laws – Not Discussed

VII.b. Revision to Advisory Opinion Section B, 2.5

Mr. Johnson asked whether the COE wanted to ratify the COE's July 15, 2010, decision, which would alter the COE's Rules of Procedure to add a proposed amendment to section B., Advisory Opinions, section 2.5, Processing Advisory Opinions. He said that a subsection f would be added with the following proposed language:

- f. Once submitted, an advisory opinion request may not be withdrawn by the submitting party.

Mr. Johnson stated that he had not yet posted the proposed change to the COE's Web site.

MOTION to approve that the proposed change to the COE's Rules of Procedure, section B. subsection 2.5, be posted to the COE's Web site for at least 30 days, and that a motion on the proposed change be tabled until the next COE meeting. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.

VIII. COMPLAINTS

Mr. Johnson stated that:

- Complaints C10-002 and C10-003 were from the same complainant.
- Neither complaint was legally sufficient, nor were they within the Code's timeframe because the actions allegedly took place prior to May 1, 2010.
- He would recommend adoption of C10-002 and C10-003, and that Judge Rodgers sign the Final Report and Final Order of Dismissal for both complaints.

VIII. - CONTINUED

- Staff would be sending a copy of C10-002's and C10-003's documents to the State Attorney's Office, the U.S. Attorney's Office, and the State COE; all of whom had jurisdiction over these matters.

VIII.a. C10-002

MOTION to approve accepting the Public Report and Final Order of Dismissal for C10-002. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

VIII.b. C10-003

MOTION to approve accepting the Public Report and Final Order of Dismissal for C10-003. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

IX. EXECUTIVE DIRECTOR COMMENTS

IX.A.

DISCUSSED: Municipality Update.

Mr. Johnson stated that:

- He had given presentations to representatives of the following municipalities: the City of Riviera Beach, the Town of Boynton Beach, the City of Delray Beach, the Town of South Palm Beach, the City of Lake Worth, the Village of Wellington, the Town of Royal Palm Beach, the City of Greenacres, the Town of Lantana, and the City of West Palm Beach.
 - The Town of Lantana would be conducting its first reading of the Code's and the COE's ordinances on September 13, 2010, and planned on adopting its versions.
- All changes had been made to the enabling ordinances and to the interlocal agreement.
- Any interlocal agreement would sunset with the acceptance of a particular municipality.

IX.B.

DISCUSSED: Ethics Education.

Mr. Johnson stated that:

- He and Dr. Fiore had met with Palm Beach Atlantic University officials.
- Countywide, there were many good ethics ideas and programs, but they were all individual.
- The COE could become an umbrella that could bring ethics together regarding education in the public schools and the colleges through fellowships, internships, and scholarships.

IX.C.

DISCUSSED: Attorney Interviews.

Mr. Johnson said that interviews for an attorney would take place at the end of September, and he was hoping to introduce someone, at least by name, by the next meeting.

Mr. Harbison clarified that the education initiatives described by Mr. Johnson were mandated by, and were part of, the original ordinance for community education.

PUBLIC COMMENT: Suzanne Squire.

X. COMMISSION COMMENTS

X.A.

DISCUSSED: Office of the Inspector General (OIG) Employment Postings.

Dr. Fiore stated that:

- She had been contacted by a citizen who was interested in applying for an OIG position and asked for the employment postings location, because the OIG's Web site did not list employment postings.

X.A. – CONTINUED

- Assistant County Administrator Brad Merriman was consulted, and he stated that staff recommended that jobs be posted through the County, although the process was not required.
- Currently, the hiring process conducted in the OIG was not being implemented through the County.

Judge Rodgers commented that an announcement should be made as to where OIG employment postings were located.

Mr. Harbison stated his belief that it was appropriate that the inspector general be completely independent and not use County resources. He suggested that anyone interested in applying for an OIG position could contact the inspector general.

Judge Rodgers requested that Mr. Johnson discuss the issue with the inspector general.

XI. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

At 5:55 p.m., the meeting was adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 30, 2010

Mr. Angelo DiPierro
Mgr. Office of Management and Budget
Division, Fixed Assets Management Office
301 N. Dixie Highway
West Palm Beach, FL 33401

Re: RQO 10-016
Outside Employment

Dear Mr. DiPierro,

Your request for advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED, in your e-mail of August 26, 2010, whether you, as a manager in the financial management division of the county Office of Financial Management and Budget (OFMB), could seek outside employment as an adjunct professor teaching macro and microeconomics at Palm Beach State College beginning January, 2011. Your schedule would involve evening courses at the college, approximately three (3) hours between 6:30 p.m. and 9:15 p.m. Additionally, you have received merit rule approval from your county supervisor.

IN SUM, your outside employment as an adjunct professor with Palm Beach State College does not violate the Palm Beach County Code of Ethics prohibited contracts provision. This opinion is based upon the facts and circumstances that you have provided.

THE LEGAL BASIS for this opinion involves sec. 2-443(c) of the code of ethics. Employees of the county are prohibited from entering into transactions with the county, directly or indirectly, through themselves or their outside employer of business. Palm Beach State College has several contracts with county departments and therefore subjects you to the prohibition of this section.

Sec. 2-443(d)(5) establishes a process by which the prohibition is waived for employees. This waiver provision reads as follows:

(5) Notwithstanding any provision to the contrary, subsection (c) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county provided that:

(a) The employee or relative of the employee does not work in the county department which will enforce, oversee or administer the subject contract; and

(b) The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the contrary; and



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(c) The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and

(d) The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and

(e) The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and

(f) The employee has obtained a conflict of interest opinion from the Commission on Ethics finding no conflict exists regarding the subject contract. The request for advisory opinion must be made in writing and set forth and include all pertinent facts and relevant documents.


According to the information you provided to the Ethics Commission, Palm Beach State College has five active contracts with Palm Beach County, none of which are administered by the OFMB. Current contracts exist with Parks & Recreation, Facilities, Airports and the Office of Small Business Administration. You do not enforce, oversee or administer any of the contracts nor have you participated in determining the award or requirements therein. Your county job responsibilities do not require that you be involved in any of these contracts. You do not have a relative involved in any of the above mentioned facets of these contracts. Lastly, you have complied with applicable merit rules by obtaining written permission from your supervisor.

IN CONCLUSION, you have complied with the part-time employment requirements of s. 2-443 and therefore may teach evening courses at Palm Beach State College for the semester beginning January, 2011.

This opinion construes the Palm Beach County Code of Ethics ordinance and is based on the facts and circumstances you have provided. It 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 if I can be of any further assistance in this matter.

Sincerely,


Alan S. Johnson
Executive Director

ASJ/gal



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September 30, 2010

Mr. Shawn Wilson
Housing Trust Group, LLC
Palm Beach Office
750 Malibu Bay Drive
West Palm Beach, FL 33401

Re: RQO 10-022
Advisory Board

Dear Mr. Wilson,

Your request for advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed.

YOU ASKED, in your e-mail of September 14, 2010, whether you were subject to the prohibited contractual relationships section of the Palm Beach County Code of Ethics and therefore needed a waiver from the Palm Beach County Board of County Commissioners to remain on the Palm Beach County Emergency Shelter Grant Program (ESGP) Advisory Board. On September 16, 2010 you indicated by email that you had decided to resign from the ESGP Advisory Board. Pursuant to the Commission on Ethics Rules of Procedure, Section B 2.4 (f), once submitted, an advisory opinion request may not be withdrawn by the submitting party. Therefore, please find the following response to your original request.

IN SUM, according to the facts and circumstances you submitted, once your outside employee entered into a contract with the county, in order to remain on the Emergency Shelter Grant Program Advisory Board, you would have needed to obtain a waiver from the Board of County Commissioners.

THE FACTS as you submitted them are as follows:

You are an employee of Housing Trust Group, LLC. At the time of your request, there was a contract making its way to the Board of County Commissioners that would have resulted in the sale of Westgate CRA property to Housing Trust Group, LLC, your employer. In addition, at the time of the request, you were a member of the ESGP Advisory Board appointed by the Board of County Commissioners.

THE LEGAL BASIS for this opinion relies on the following relevant sections of the Palm Beach County Code of Ethics:

Code of Ethics.

Sec. 2-443(c) prohibits an official from entering into any contract or other contract for goods or services with the county. The prohibition extends to all contracts or transactions between the county and the official, directly or indirectly, and includes the official's *outside employer or business*.

Sec. 2-443(d) allows for the waiver of subsection (c) "upon full disclosure of the transaction or financial benefit prior to the waiver and an affirmative vote of five (5) members of the board of county commissioners".



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
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Executive Director

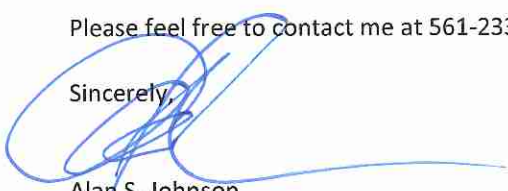
Alan S. Johnson

IN SUMMARY, once Housing Trust Group, LLC enters into a contract with the county, the prohibition of Section 2-443(c) is invoked and you would have been required to resign or seek a waiver from the Board of County Commissioners. By resigning from the ESGP Advisory Board, you no longer are subject to the above sections of the Palm Beach County Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics ordinance and is based on the facts and circumstances you have provided. It 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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal

October 8, 2010

Ms. Laura Beebe
Deputy Director, Airports Business Affairs
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406

Re: RQO 10-013
Department of Airports Fuel Surcharge Proposal and
Potential Conflict of Interest Concerns by Members of the AAAB

Dear Ms. Beebe,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED in your email of August 4, 2010, whether a conflict of interest exists on the part of Aviation and Airports Advisory Board (AAAB) members voting on a fuel flowage fee at General Aviation (GA) Airports when board members own aircraft and purchase fuel at these airports. The Commission on Ethics received additional information from you regarding General Aviation fuel flowage, hangar space, tenants and airport operations in supplemental emails and documents received August 6, 10, 11,16, and September 10, 20 and 28.

IN SUM, the ethics commission opined that airport users are considered "similarly situated members of the general public" for purposes of determining whether a voting conflict exists regarding a fuel flowage surcharge affecting only general aviation airport users, provided that the individual board member's benefit or loss does not significantly exceed other members of the affected class.

THE FACTS as we understand them are as follows:

The aviation and airports advisory board (AAAB) is a volunteer board appointed by the Palm Beach County Board of County Commissioners to review issues pertaining to airports within Palm Beach County and make recommendations to the commission. The Palm Beach County Department of Airports has proposed increasing fuel flowage fees at three general aviation (GA) airports: North County General Aviation, Palm Beach County Park Airport (Lantana) and Palm Beach County Glades Airport. The fuel surcharge varies between the three airports and would apply to all aircraft (public and private) with the exception of military aircraft. The fees would not apply to motor vehicle fuel.

The amount of surcharge would vary between 3% and 5% per gallon. Some members of the AAAB own or lease aircraft and one member purchases fuel at the GA airports. Fuel is purchased from a fixed base operator who is a county tenant providing aviation services at the airports. The fixed base operator would collect the fee on the county's behalf and remit the fee to the county. These fuel farms are operated similar to gas stations (i.e., pay as you go). The aircraft owned by the AAAB member is a private aircraft.

Fuel flowage fees are standard in the industry and are charged at most airports, both international and regional, to cover a portion of the costs incurred to maintain the airports. The Department of Airports is recommending the adjustment to the fees. A fuel flowage fee has already been established for Palm Beach International Airport (PBI). The AAAB reviews recommendations of the Department of Airports as an advisory board to the Board of County Commissioners. There is not a specific formula for determining these fees, and fees can vary for a variety of reasons including the airport costs being recovered and the ability of the airport to support the fees.

The County's airports are self-sustaining and are not funded through the general county fund or ad valorem taxes. The Department of Airports is funded exclusively through airport revenue sources, including user fees, rentals, and state and federal grant sources. Any revenues derived from fuel flowage fees would be deposited in an airport account to be used for the maintenance and operation of the airports. The county is prohibited from diverting airport revenues into the general county fund pursuant to the county's federal grant assurance requirements. Any shortfall in operating expenses would not be made up by general revenues or taxes. Fees collected at an individual airport would remain with that airport.

The Department of Airports does not maintain information on the number of aircraft that purchase fuel from the fixed based operators. Information regarding the total number of gallons of fuel sold is maintained. For example, in May, 2010, approximately 83,000 gallons of aircraft fuel were dispensed at the three airports.

According to the "Florida Aviation System Plan, General Aviation Based Aircraft Forecast" statistics as of 2008, the following number of aircraft were based at the subject General Aviation Airports:

North Palm Beach County:	243
Palm Beach County Glades:	3
Palm Beach County Park:	<u>340</u>
Total Based Aircraft:	586

Including tenants and itinerant aircraft (i.e., aircraft that fly into the airport but are not based at the airport), who purchase fuel at these general aviation airports, according to the Florida Aviation

System Plan operations forecast, the total number of take-offs and landings for 2008 were as follows:

North Palm Beach County – 75,391
Palm Beach County Glades – 38,000
Palm Beach County Park – 145,000

Regarding the current membership of the AAAB, one member, Herbert Kahlert, personally owns an aircraft based at one of the 3 general aviation airports in question. The craft is used for both personal and business related reasons but is not operated as an aviation related business. Mr. Kahlert purchases on average 300 to 400 gallons of fuel per month.

THE LEGAL ISSUES presented to the commission involve the following relevant sections of the Palm Beach County Code of Ethics:

Article XIII, Sec. 2-443. Prohibited Conduct.

(a) Misuse of Public Office or Employment. An official or employee shall not use his or her official position or office, or take or fail to take any action or influence others to take or fail to take any action, in a manner in which he or she knows or should know with the exercise of reasonable care, will result in a financial benefit, *not shared with similarly situated members of the general public*, for any of the following persons or entities: *(emphasis added)*

(1) Himself or herself;

Article XIII, Sec. 2-443.

(b) Disclosure of Voting Conflicts. A county official shall abstain from voting and not participate in any matter that will result in a financial benefit as set forth in subsections (a)(1)-(7) above.

The issue of prohibited conduct and voting conflict turns on whether a financial benefit is shared with similarly situated members of the general public. For the purpose of ordinance construction, the commission finds that a financial benefit includes both a private gain or loss. In this instance, any benefit or loss obtained through the fuel surcharge would apply to all users of the 3 airports. There is no additional burden placed on the general population if the surcharge is rejected. Therefore, the class affected by the fuel surcharge is limited to the approximately 600 base users and an unknown additional number of visiting craft (take-offs and landings) who actually purchase

fuel from the fixed base operators. Since gain or loss rests universally with airport users, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him or her to gain (or lose) more than the other members of the class.

In determining the number of individuals who would need to be affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public, there is no bright line. The Florida State Code of Ethics s.112.3143(3) Florida Statutes, similarly prohibits a county, municipal, or other local public officer from voting “in an official capacity upon any measure which would inure to his or her special private gain or loss. . .” . A number of opinions issued by the Florida Commission on Ethics interpret “private gain or loss” in a consistent manner with “financial benefit, not shared with similarly situated members of the general public” and these opinions are based upon the size of the class of persons who stand to benefit from the measure.¹

We agree with this interpretation. The determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public therefore turns on the size of the class of persons who stand to benefit from the measure. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him to gain more than the other members of the class. However, where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.²

In CEO 93-12 (April 22, 1993), the Florida Commission on Ethics found that a member of the Board of Trustees of the St. Petersburg Fireman’s Retirement System, who was himself a city firefighter and a recipient under the pension plan, was not required to abstain from voting on an issue involving the handling of a pension lawsuit “that could benefit or harm himself as a member of the class action.” The State Commission opined as follows:

“In past opinions, we have focused on the size of the group or class of persons to be affected by a measure in determining whether the gain or loss to a public officer within the group would be “special” within the meaning of the provisions of section 112.3143, unless there are circumstances that are unique to the officer which would distinguish the public officers gain or loss from that of other members of the group. . . . Here, it appears that all members of the group (civil lawsuit class) containing the Trustee are similarly situated, that is, they all stand to gain in the same way regarding firefighter retirement benefits. Therefore, we find based on our precedent, that 297 persons is not so small a class that gain to the Trustee as an individual member of the class would be “special” within the meaning of the statutory sections set forth above.”

¹ CEO 90-71 (October 19, 1990), CEO 91-72 (December 6, 1991), CEO 76-62 (March 16, 1996)

² CEO 77-129

IN SUMMARY, based on the facts and circumstances provided, it is the opinion of the Ethics Commission that the financial benefit or loss sustained by Mr. Kahlert is “shared with similarly situated members of the general public” and that the amount of fuel purchased (300-400 gallons monthly) does not constitute a unique circumstance wherein his personal gain or loss exceeds significantly other members of the affected class of airport users.

You currently have only one AAAB member who owns a craft and purchases fuel at the affected general airports. A finding of no unique circumstance is limited to the facts presented in this request.

This opinion construes the Palm Beach County Code of Ethics ordinance. While reference has been made to the State of Florida Code of Ethics, specifically s.112.3143 voting conflicts, it is not applicable to any potential 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

October 8, 2010

Dr. Virginia Sayre
Palm Beach County Animal Care and Control
7100 Belvedere Road
West Palm Beach, FL 33411

Re: RQO 10-015

Dear Dr. Sayre,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED, in conjunction with Assistant County Administrator Vince Bonvento, in e-mails of August 18 & 19, 2010, whether you, as a Veterinarian employed by the Palm Beach County Animal Care and Control Department, are permitted to engage in outside employment involving low cost vaccination and spay/neuter surgeries for cats and dogs at local area stores. You also submitted a series of follow-up e-mails containing additional information on August 23, 24 & 31,

IN SUM, your work during off duty hours at Paws Plus, offering low cost vaccination, and Luv-A-Pet, a non-profit rescue organization, performing spay/neuter surgeries, does not violate the code of ethics as neither entity has contracts for goods or services with Palm Beach County. Your outside business, Pet Wellness Station, utilizing the premises of The Red Barn, an entity that does enter into transactions with the County, likewise does not violate the code of ethics as you are neither employed by, nor in business with The Red Barn. In addition, you have complied with the applicable merit rule requirements as per s. 2-443(d)(5).

THE FACTS as we understand them are as follows:

You are employed full time by Palm Beach County Animal Care and Control (ACC) as a veterinarian. Your duties as a staff veterinarian include surgery, physical examination and treatment of sick, injured and healthy animals. The County charges a nominal fee for these services but generally operates at a net loss. You are not involved with ACC contracts or decentralized purchase orders (DPOs) with county vendors. Your hours of employment with ACC are Monday-Friday, 8:00 am to 4:30 pm. During off-duty hours, you maintain outside employment with Paws Plus, which provides low cost vaccination clinics at pet supermarkets, and Luv-A-Pet, which is a non-profit rescue organization performing low cost spay/neuter surgeries for various animal rescue groups and the public. Neither of these companies is a vendor of, or has contracts with, the county.

In addition, you indicated that you own a company, Wellness Station, providing low cost vaccinations at area pet stores, including The Red Barn. You advertise this service in local newspapers and hand flyers but do not mention ACC, the county or your position as a staff veterinarian in these advertisements. Of the locations offering your services, only The Red Barn is a county vendor. Wellness Station does not maintain any contracts or transactions with Palm Beach County. You are not paid by, nor do you pay The Red Barn for running the Wellness Center clinic on their property.

According to Animal Care and Control, 13 decentralized purchase orders (DPOs) were issued totaling \$1,364.50 to Red Barn since 10/01/2009. Of that total, four (4) DPOs totaling \$813.75 were for the purchase of penicillin. Normally penicillin is purchased directly through the manufacturer; however, on occasion it is necessary to order from a retail outlet if stocks are low and backordered. The remaining DPOs totaling \$550.75 were for goods needed on short notice (e.g., hay, horse feed, and/or exotic pet foods). You stated that you have no involvement with the Red Barn DPOs.

As to your relationship with the Red Barn, you are not a paid employee, contractor, consultant or vendor of that company. Red Barn allows you space to perform vaccinations at their location free of charge.

ACC responded to staff requests for information regarding any loss of revenue to the county due to your outside employment. The Division shelters nearly 26,000 animals each year and otherwise provides services to the public. While you do perform some of the same services for both ACC and your outside business and employers, ACC vaccination, sterilization and care of sheltered and public animals is performed at a net loss in revenue to the county. According to ACC staff, revenue is enhanced by private vaccinations so long as veterinarians adhere to the law in furnishing rabies certificates to the Division. Accordingly, low-cost clinics performed by entities other than the county save county resources. ACC confirms that you adhere to the law, sell rabies tags and furnish rabies certificates with your outside vaccinations.

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

Sec. 2-443(c) prohibits an employee from entering into any contract or other transaction for goods or services with the county. This prohibition extends not only to an employee, directly or indirectly, but through the employees outside business or employer as well. According to sec. 2-442, the definition of outside employer or business includes any entity where you are employed and receive compensation, or any entity doing business with the county in which you have an ownership interest of at least five (5) percent.

You are an employee of both Paws Plus and Luv-A-Pet; however, these entities do not have contracts or otherwise transact business with the county. The Red Barn does transact with the county, however, you are not an employee of Red Barn. While you do own the Wellness Station, your company does not transact business or maintain contracts with the county. Therefore, based on the information provided, you do not have a prohibited contractual relationship in violation of sec. 2-443(c).

Sec. 2-443(a) prohibits you from using your official position or office for personal gain, not shared with similarly situated members of the general public, for yourself, or your outside employer or business. Based on the facts and circumstances submitted, you have not used your position with ACC to advertise or otherwise enhance your part time position with Paws Plus, Luv-A-Pet or Wellness Station. There is no indication that you have otherwise gained a financial benefit, not shared by similarly situated members of the public, and based upon your position with the county.

IN SUMMARY, your outside employment with Paws Plus and Luv-A-Pet does not violate the prohibited contracts section of the code of ethics. These companies do not transact business with the county. In addition, your outside business, the Wellness Station, does not transact business with the county, and since you are not an employee of The Red Barn, operating your clinic independently on their premises does not subject you to the prohibitions set forth in sec. 2-443(c).

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you and staff at ACC have submitted. It 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

October 8, 2010

Ms. Theresa Miller
Information System Services
301 N. Olive Avenue – 8th Floor
West Palm Beach, FL 33401

Re: RQO 10-018 (version 1)
Condolence Gifts from Employees

Dear Ms. Miller,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED, in your e-mail of September 2, 2010, whether county employees who receive congratulatory or condolence gifts from a voluntary employee fund are subject to gift law reporting requirements.

IN SUM, depending on the nature and the amount of the gift, recipients may be required to complete and include the gift in an annual gift disclosure report submitted to the Palm Beach County Commission on Ethics.

The facts as we understand them are as follows:

The Palm Beach County Information Systems Services (ISS) employees participate in a voluntary contribution fund established within the department to “show support for and share thoughts of encouragement and caring for” fellow employees during “pivotal events that may occur at some time while here in ISS”. Participation is voluntary and contributions are given monthly (or annually) in a dollar amount ranging from \$1.00 to \$5.00 monthly with a \$60.00 annual maximum per individual.

Recently, these funds have been distributed for two births (\$60.00), floral arrangements for two deaths (\$213.00), and one, “in honor of”, donation of \$75.00 to a hospice. The maximum gift in any circumstance is \$150.00.

THE LEGAL BASIS for this opinion relies on the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-444. Gift Law.

(d) Gift Reports. Any official or employee who receives a gift in excess of One Hundred Dollars (\$100.00) shall report that gift.

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, s. 112.3148, as may be amended. A copy of each report shall be filed with the county Commission on Ethics.

(2) *All other officials and employees.* All other officials or employees who receive any gift in excess of One Hundred Dollars (\$100.00) shall complete and submit an annual gift disclosure report with

the county Commission on Ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30th of each year.

For those employees who receive congratulatory gifts in an amount less than One Hundred Dollars (\$100.00) there is no gift law reporting requirement. In regards to condolence gifts, the issue becomes whether or not the county employee is the recipient of that gift. It is our opinion that a condolence gift given to the family of an employee is not a gift specific to the employee. If the condolence gift is directed specifically to an employee, then that is considered a gift to the employee and, if in excess of One Hundred Dollars (\$100.00), must be reported as per the code.

One additional issue must be considered in this context. Section 2-444 (c) prohibits the offer or acceptance of a gift in exchange for an official public action, legal duty performed or legal duty violated by an employee. This prohibition applies to any gift no matter the amount. While unlikely than an internal departmental congratulatory or condolence gift to a fellow employee would involve such a violation, employees must be mindful of this prohibition, especially when supervisory personnel are involved.

IN SUMMARY, congratulatory or condolence gifts specifically given to and received by an individual employee in excess of One Hundred Dollars (\$100.00) in value must be reported in an annual gift disclosure report filed with the Palm Beach County Commission on Ethics. Those individuals identified by state law as "reporting individuals" will need to comply with s 112.3148, Florida Statutes, in this regard.

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. In addition, your request was general in nature, and this opinion is therefore not specific to any one detailed scenario.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

October 8, 2010

Ms. Theresa Miller
Information System Services
301 N. Olive Avenue – 8th Floor
West Palm Beach, FL 33401

Re: RQO 10-018 (version 2)
Condolence Gifts from Employees

Dear Ms. Miller,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED, in your e-mail of September 2, 2010, whether county employees who receive congratulatory or condolence gifts from a voluntary employee fund are subject to gift law reporting requirements.

IN SUM, depending on the nature and the amount of the gift, recipients may be required to complete and include the gift in an annual gift disclosure report submitted to the Palm Beach County Commission on Ethics.

The facts as we understand them are as follows:

The Palm Beach County Information Systems Services (ISS) employees participate in a voluntary contribution fund established within the department to “show support for and share thoughts of encouragement and caring for” fellow employees during “pivotal events that may occur at some time while here in ISS”. Participation is voluntary and contributions are given monthly (or annually) in a dollar amount ranging from \$1.00 to \$5.00 monthly with a \$60.00 annual maximum per individual.

Recently, these funds have been distributed for two births (\$60.00), floral arrangements for two deaths (\$213.00), and one, “in honor of”, donation of \$75.00 to a hospice. The maximum gift in any circumstance is \$150.00.

THE LEGAL BASIS for this opinion relies on the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-444. Gift Law.

(d) Gift Reports. Any official or employee who receives a gift in excess of One Hundred Dollars (\$100.00) shall report that gift.

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, s. 112.3148, as may be amended. A copy of each report shall be filed with the county Commission on Ethics.

(2) *All other officials and employees.* All other officials or employees who receive any gift in excess of One Hundred Dollars (\$100.00) shall complete and submit an annual gift disclosure report with

the county Commission on Ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30th of each year.

For those employees who receive congratulatory gifts in an amount less than One Hundred Dollars (\$100.00) there is no gift law reporting requirement. In regards to condolence gifts, the issue becomes whether or not the county employee is the recipient of that gift or, if the gift is an indirect expenditure, whether it is given with the intent to benefit the employee. It is our opinion that a condolence gift of a floral arrangement given to the family of an employee is an indirect expenditure that is not given with the intent to specifically benefit that employee. On the other hand, if the condolence gift is directed specifically to an employee, then it is considered a gift to the employee and, if in excess of One Hundred Dollars (\$100.00), must be reported as per the code.

One additional issue must be considered in this context. Section 2-444 (c) prohibits the offer or acceptance of a gift in exchange for an official public action, legal duty performed or legal duty violated by an employee. This prohibition applies to any gift no matter the amount. While unlikely than an internal departmental congratulatory or condolence gift to a fellow employee would involve such a violation, employees must be mindful of this prohibition, especially when supervisory personnel are involved.

IN SUMMARY, congratulatory or condolence gifts specifically given to and received by an individual employee in excess of One Hundred Dollars (\$100.00) in value must be reported in an annual gift disclosure report filed with the Palm Beach County Commission on Ethics. Those individuals identified by state law as "reporting individuals" will need to comply with s 112.3148, Florida Statutes, in this regard.

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. In addition, your request was general in nature, and this opinion is therefore not specific to any one detailed scenario.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

October 8, 2010

Ruth Moguillansky-DeRose
Palm Beach County Office of Community Revitalization
2300 Jog Road
West Palm Beach, FL 33411

Re: RQO 10-020
County employee on non-profit board of directors

Dear Ms. Moguillansky-DeRose,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED in your e-mail and attachment of September 3, 2010, whether you may represent your county department on the board of directors of a non-profit entity that receives grants and program funding from the county and, more specifically, with your department. Additional information regarding the specific relationship between the non-profit entity and the county programs administered by the Office of Community Revitalization, as well as documents relating to the structure of Rebuilding Together of the Palm Beaches, was received on September 15 and 20, 2010.

IN SUM, sec. 2-443(a)(7) specifically prohibits you, as a county employee, from using your official position or office to obtain a financial benefit for a charitable organization of which you are an officer or director.

THE FACTS as we understand them are as follows:

You are the principal planner for the Office of Community Revitalization (OCR), a county department established to serve as the main point of contact on issues related to neighborhood revitalization and community outreach and development. As part of its mission, OCR assists neighborhood groups and residents in effectively accessing and using county services and other community resources. In addition, OCR provides education, technical and financial assistance to help residents plan and implement sustainable neighborhood improvements.

Rebuilding Together of the Palm Beaches (RT) is a local affiliate of a national nonprofit volunteer association whose focus is to repair, rehabilitate and improve the houses of low income families, disabled and elderly citizens of the county. Funding for RT is provided by national and local corporate sponsors. The national RT offices, located in Washington, DC, recruit companies such as Home Depot, Lowes and Sears for sponsorships. Additional funding is obtained by way of local government grants and programs. Examples of grants include, the Resident Education to Action Program (REAP) and

Neighborhood Partnership Grants (NPG) which have been awarded to RT through the OCR and the Countywide Community Revitalization Team (CCRT), an advisory board established by the Board of County Commissioners to coordinate activities under the umbrella of OCR. The current grant implementation process includes a formal steering review committee to review applications and make recommendations to the OCR director regarding the forwarding of grants to the BCC for approval.

OCR is unaware of any organization other than RT that performs like services for the community. Habitat for Humanities comes closest; however, that organization builds homes as opposed to focusing on repair of existing properties. Notwithstanding, there are other applicants for both the county REAP and NPG grants. They mostly include formal or informal neighborhood groups representing specific communities. Habitat for Humanity also submitted a competing application for and obtained an NPG grant on behalf of Westgate Village.

Representing OCR on the RT board is not part of your job description, however, you indicated that you had consulted with the OCR director and your participation was a directive of the department. This decision reflected the belief that your presence on the board would be beneficial to OCR. It should be noted that your participation is as a volunteer working during off duty hours. Your position on the RT board will also involve "requests for donations, services and/or assistance from other county departments and outside organizations for the benefit of the communities" OCR serves. In addition, your responsibilities with OCR include oversight of grants and/or contracts with RT within the umbrella of OCR responsibility.

THE LEGAL BASIS for avoidance of misuse of public office is found in sec. 2-443(a) of the code of ethics:

Sec. 2-443. Prohibited conduct.

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (7) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she ...is an officer or director.

Your position on the board of directors of RT is in direct conflict with this prohibition when you use your official position to assist RT in obtaining any financial benefit, including grants and program benefits. The fact that you have oversight authority within the OCR creates a direct conflict where your authority extends to OCR grants and programs. Grants outside the authority of OCR still present the appearance of conflict. This is underscored by the fact that other nonprofit entities may be competing with RT for the same county dollars.

Another concern is solicitation of donations that are related to RT and not OCR. Sec. 2-444(a) prohibits a county employee from soliciting or accepting, directly or indirectly, any gift with a value in excess of

\$100.00 from any person or business entity that is a lobbyist, principal or employer of a lobbyist. Some of the entities you had mentioned as donating materials or services to RT include vendors who employ lobbyists. Gifts solicited in your capacity as a county employee “on behalf of the county” in the “performance of your official duties for use solely by the county in conducting official business” are exempt. Gifts solicited for a non-profit organization are not.

IN SUMMARY, while there is no prohibition against you, in your official position as principal planner at OCR, from participating in meetings or otherwise being involved with RT and the activities and programs it provides to county residents, you cannot do so as an “officer or director” of that organization without effectively violating sec. 2-443(a) of the code of ethics as you are intricately involved in the ongoing relationship RT maintains with the county. Additionally, in any capacity, you may not solicit donations from county vendors who employ lobbyists, unless it is done on behalf of the county, in the performance of your official duties and for use solely by the county in conducting official business.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you and staff at ACC have submitted. It 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

October 8, 2010

Ms. Vianey S. Yurkovich
Palm Beach County Division of Senior Services
Senior Aide Program Coordinator
3680 Lake Worth Road
Lake Worth, FL 33461

Re: RQO 10-021
Raffles and Senior Centers

Dear Ms. Yurkovich,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED, in your e-mail of September 13, 2010, whether county vendors were permitted to conduct raffles of donated items at open houses taking place at county run senior centers.

IN SUM, while the Palm Beach County Code of Ethics does not specifically prohibit vendors from conducting raffles to the public in county operated senior centers, any benefit obtained by a county employee from the raffle may constitute a misuse of public office or employment under section 2-443 or an improper gift under section 2-444. In addition, with the exception of charitable nonprofit organizations under s. 849.0935, Florida Statutes, "any lottery, drawing for the distribution of a prize or prizes by lot or chance" is prohibited under s. 849.09, Florida Statutes, and may constitute a crime.

THE FACTS as we understand them are as follows:

The Palm Beach County division of Senior Services runs several senior center facilities owned by Palm Beach County. The facilities are staffed by county employees. From time to time, these county-run facilities host "open houses" to publicize services and programs offered at the senior centers. Senior oriented vendor companies including healthcare organizations such as Humana, Oasis Home Care, various home health agencies and assisted living agencies, as well as nonprofit organizations such as Area Agency on Aging attend open houses and distribute brochures and handouts about their programs to the public, including senior center participants and care givers. These vendors have requested permission to bring donated items to raffle to the public at the county facility open houses. The raffle would be conducted by the vendors and not county staff. County staff would be prohibited from participating in the raffle or accepting any gifts from the vendors. The items subject to the raffle would include "pens, bubble bath, spa soaps, pill holders, \$10 gift certificates to Publix, magnifying glasses, etc." The vendor would insert their business card in the gift bag containing the raffle prize and thereby use it to market their company. You indicated that there would be no charge to participants and that

the tickets would be distributed by the vendors who would then call out the winning numbers and distribute the prizes.

Staff has refused to allow these raffles at the Palm Beach County Senior Center open houses. As Senior Aides Program Coordinator for the Palm Beach County Division of Senior Services, you have submitted this request for an advisory opinion to determine whether your refusal is appropriate and in accord with the Palm Beach County Code of Ethics.

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

Sec. 2-443(a) prohibits an employee from using their office for financial benefit for himself or herself. Clearly, even if the raffle were deemed appropriate, no Division of Senior Services employee may seek or obtain a benefit in exchange for permitting such a raffle. Nor can a county employee accept any gift in exchange for permitting a raffle without running afoul of section 2-444(c) prohibiting the offer or acceptance of a gift in exchange for the performance or non performance of an official public action or legal duty.

Notwithstanding the fact that the Palm Beach County Code of Ethics does not specifically bar a raffle conducted by for-profit vendors at a county facility, s. 849.09, Florida Statutes, prohibits any person from setting up, promoting or conducting a lottery for money or anything else of value.¹

Florida law does exempt charitable, nonprofit organizations from the prohibition of s. 849.09, Florida Statutes; however, based on your facts, most if not all of the county vendors are for-profit companies. While it is outside the jurisdiction of this commission to opine as to whether the aforementioned raffle violates state criminal laws², it is and should be a matter for concern.

¹ 849.09 Florida Statutes

(1) It is unlawful for any person in this state to:

- (a) set up, promote, or conduct any lottery for money or anything else of value;
- (b) dispose of any money or other property of any kind whatsoever by means of any lottery;
- (c) conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, poster, pamphlets, radio, telegraph, telephone, or otherwise;
- (d) aid or assist in setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing;

² Op. Atty. Gen. 060-117, July 15, 1960 (promotion scheme by the municipal gas department of the City of Clearwater, whereby participation in this contest is secured by a person simply mailing his address to the municipal gas department and thereby becoming eligible to win a \$1000 cash prize to be awarded by a drawing, contained all three elements of a lottery, including the element of consideration which was present through the possible use of the entries to obtain a ready mailing list of potential customers)

According to county administration, there is no specific written county policy governing raffles in county facilities. Regardless of whether or not the proposed raffle violates county policy or state lottery laws, we are aware of no legal requirement that the Division of Senior Services permit such activity at county facilities. You have denied the request and refused to allow the raffle at your county facilities. Your prime reason for doing so was to avoid the appearance of impropriety that might arise from vendor raffles being conducted for the purposes of marketing their businesses at county run senior centers.

IN CONCLUSION, to the extent that a raffle is permitted on county property, county employees may not benefit by permitting such a lottery, nor may county employees accept gifts from the vendors in exchange for any official public action, legal duty performed or legal duty violated by the employee. In addition, for-profit vendor lotteries are prohibited by state law. Lastly, limiting vendor marketing on county property does not violate the Palm Beach County Code of Ethics or related ordinances.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inclusion of s. 849.09, Florida Statutes, in this opinion is for informational purposes so that you and the county vendors may avoid any violation of state criminal law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics or the Attorney General.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

October 8, 2010

Thomas J. Baird, P.A.
11891 U.S. Highway One, Suite 100
North Palm Beach, FL 33408

Re: RQO 10-023
Dennis Koehler

Dear Mr. Baird,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED in your letter of September 21, 2010, and in your capacity as general counsel for the Westgate/Belvedere Homes Community Redevelopment Agency (Westgate CRA), whether one of the CRA's appointed commissioners may be the beneficiary of a fundraising event to help defray medical expenses. Those who may contribute include individuals or businesses that have appeared or may appear in the future before the Westgate CRA. On October 5, 2010 the ethics commission received a letter from your client stating that he had decided to resign from the Westgate CRA. Pursuant to the Commission on Ethics Rules of Procedure, Section B 2.4 (f), once submitted, an advisory opinion request may not be withdrawn by the submitting party. Therefore, please find the following response to your original request.

IN SUM, the Commission on Ethics opined that individuals or entities soliciting donations on behalf of an advisory board member are prohibited from soliciting or accepting any gift with a value greater than One Hundred (\$100) Dollars from lobbyists, or any principal or employer of a lobbyist who lobbies the recipient's advisory board. In addition, as a public official, he is required to abstain from and disclose any voting conflicts and not participate in a matter involving a conflict of interest. Lastly, the official would need to take great care to avoid using his official position or office to take or fail to take an action as a result of any permissible gifts or donations made on his behalf at a fundraiser.

THE FACTS as we understand them are as follows:

You represent Dennis Koehler in your capacity as general counsel for the Westgate/Belvedere Homes Community Redevelopment Agency (Westgate CRA). The Westgate CRA is an independent special district of Palm Beach County. The Board of County Commissioners created the Westgate CRA in 1990 and appoints the 7 member board of commissioners. One of the Westgate CRA appointed commissioners is Dennis Koehler, Esquire.

Recently, Mr. Koehler was diagnosed with a serious illness and has been undergoing treatment. He has incurred and will continue to incur substantial medical expenses. Friends and colleagues of Mr. Koehler have organized fundraising events to help defray the costs of this continued treatment. The fundraising events are ongoing and contributors may include individuals or business entities that have appeared or

may appear before the Westgate CRA in the future. The donations to Mr. Koehler will be accepted by the Friends of Veterans, which is a 501-C-3 tax exempt organization. Mr. Koehler has not personally solicited, nor will he be soliciting donations from individuals or business entities. Nor will Mr. Koehler be taking part in the fundraising events in any way. As Mr. Koehler is concentrating on his medical treatment, he has authorized you to submit this request on his behalf.

THE LEGAL BASIS for this opinion involves several sections of the Palm Beach County Code of Ethics.

Section 2-443 prohibits a public official from using his or her official position or office to take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or reasonably should know would result in a financial benefit not shared with similarly situated members of the general public. In essence, Mr. Koehler, by accepting donations, needs to take great care to avoid acting or failing to act in a manner that would appear to favor the donors.

The relevant section prohibiting solicitation or acceptance of gifts from a lobbyist or the principal or employer of a lobbyist reads as follows:

Section 2-444. Gift Law. (b) No advisory board member, *or any other person on his or her behalf*, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) from any lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any county department that is subject in any way to the advisory board's authority. (Emphasis added)

The plain language of the code prohibits the acceptance of gifts greater than One Hundred Dollars (\$100.00) from lobbyists, or their principals or employers. No differentiation is made between religious, charitable or other 501-C-3 tax exempt organizations. Nor does the code distinguish personal fundraising events, notwithstanding the good work or good intentions of the participants.

Lastly, Section 2-443 (b) requires that county officials abstain from voting and not participate in any matter that will result in a financial benefit to specified persons and entities, including themselves. You had mentioned in your letter that contributors may include individuals or business entities that will appear in the future before the Westgate CRA. Notwithstanding any other section of the code, should Mr. Koehler continue on the CRA board, he would need to be cognizant of specific potential conflicts involving donors taking part in these fundraising events.

THE RATIONALE for limiting the manner of solicitations and donations is grounded in the desire to avoid the appearance that these solicitations and donations are made to obtain access or otherwise ingratiate the soliciting party to the donee. While the ethics commission may completely understand and sympathize with the purpose and goals of a fundraising event, the limitations imposed by the Code of Ethics are clear and unambiguous.

Previously, this issue was visited in the context of testimonial fundraisers for charitable or religious organizations¹. The commission found that the prohibition against accepting gifts with a value greater than One Hundred Dollars (\$100.00) from lobbyists, their principals or employers, applied to the honoree of a fundraising event. Although not involved in the solicitation, it was determined that under the Palm Beach County Code of Ethics, solicitations by the charitable organization were effectively being made on the official's behalf. In the case of a fundraiser held for the specific purpose of defraying the medical expenses of a county official, the limitations of the code clearly apply.

We recognize the longstanding commitment and contributions that Mr. Koehler has made to the people of Palm Beach County and his outstanding record of dedicated service over many years. The ethics commission is also mindful of the personal nature and appropriateness of the fundraiser and wishes every success to Mr. Koehler in his treatment. It cannot, however, carve out exceptions based upon the worthiness of the cause.

IN SUMMARY, if he remained on the Westgate CRA, notwithstanding the fact that Mr. Koehler would not be participating in any fundraising event held on his behalf by the Friends of Veterans, a 501-C-3 tax exempt organization, if donations were solicited or accepted in excess of One Hundred Dollars (\$100.00) from any lobbyist, principal or employee of a lobbyist who lobbies the recipient's advisory board or department, the donations would be in violation of section 2-444(b) of the Palm Beach County Code of Ethics. Under these circumstances, the only way to avoid the prohibitions under the code is for Mr. Koehler to resign his official position which he has decided to do.

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/gal

¹ RQO 10-004 and RQO 10-011 advisory opinions

October 8, 2010

Bob Nichols, CEO/Executive Director
Grassy Waters Preserve
8264 Northlake Blvd.
West Palm Beach, FL 33412

Re: RQO 10-024
Non-profit fundraiser/donor gifts

Dear Mr. Nichols,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED in your e-mail of September 17, 2010, whether vendor sponsors of your annual fundraiser "gala and golf classic" event can invite county employees or officials as their guests without violating code of ethics gift prohibitions.

IN SUM, the Commission on Ethics opined that officials and employees may not accept gifts in excess of \$100.00 from donors who are lobbyists, principals or employers of lobbyists. This prohibition applies to direct and indirect expenditures where the expenditure is provided with the intent to benefit the official or employee. Lastly, the value of the gift is assessed using the actual cost to the donor. Valuation is assessed at face value and on a daily or per event basis, whichever is greater.

THE FACTS as we understand them are as follows:

Grassy Waters Preserve (the Preserve) is a 501-C-3 non-profit organization which supports the environmental education and recreation programs of Grassy Waters Preserve, owned and operated by the City of West Palm Beach. The mission of this organization is to promote and assist the city's water catchment area/preserve with public outreach, website operation and other projects and programs offered to the general public at the Preserve. Operating expenses are reliant largely upon donations and fund raising efforts.

For the past 12 years, the Preserve has held an annual Gala and Golf Classic fund-raiser at IBIS Golf and Country Club. The 13th such event is scheduled for October 15-16, 2010. The event is generally underwritten by sponsorships from many different corporate entities. These sponsors often invite local, state and nationally elected officials and employees to participate in the event as their guests.

The Preserve offers package prices to companies who wish to participate. These packages include a foursome of golf and a table for 10 people at the Gala dinner the night before the tournament for \$1500.00. The Preserve costs are approximately \$90.00-\$96.00 dollars per person. Individual tickets to the Gala dinner only are \$75.00.

The main sponsor of the Gala does business with the county and has pending proposals in process for county government work.

THE LEGAL BASIS for this opinion may be found in sec. 2-444 or the Palm Beach County Code of Ethics as well as s. 112.3148 Florida Statutes by reference.

Sec. 2-444(a) prohibits a county commissioner or employee from soliciting or accepting directly or indirectly, any gift with a value greater than one hundred dollars (\$100.00) from any lobbyist, or any principal or employer of a lobbyist. In the case of advisory board members, section (b) limitations extend to a Lobbyist, principal or employer, "who lobbies the recipient's advisory board, or any county department that is subject in any way to the advisory board's authority."

Section (c) prohibits the acceptance by an official or employee of any gift, regardless of value, because of an official public act or legal duty performed or violated.

Section (d) requires that all allowable gifts (non-lobbyist and non-exempt) in excess of one hundred dollars (\$100.00) be reported. For those persons required to report pursuant to state law, reference is made to s. 112.3148, Florida Statutes as to the manner of compliance.

The ethics commission has previously addressed valuation issues and has determined that for purposes of valuation, s.112.3148 is relevant.¹ Of significance here, subsection (7)(h) and (i) provide the following:

- (h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.
- (i) Except as otherwise specified in this section, a gift shall be valued on a per occurrence basis.

Lastly, Florida Administrative Code, Rule 34-12.190 provides guidance on indirect expenditures:

- (1) Where an expenditure is made to a person other than the agency official or employee by a lobbyist or principal, where the expenditure or the benefit of the

¹ RQO 10-005

expenditure ultimately is received by the agency official or employee, and where the expenditure is provided with the intent to benefit the agency official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

- (3) Factors which the Commission will consider in determining whether a prohibited indirect expenditure has been made include but are not limited to:
 - (b) The existence or nonexistence of any relationship between the lobbyist or principal and the third person, independent of the relationship between the lobbyist or principal and the agency official or employee, that would motivate an expenditure to the third person;
 - (c) The existence or nonexistence of any relationship between the third person and the agency official or employee that would motivate the expenditure.

THE RATIONALE for limiting gifts to employees and officials from lobbyists is grounded in the desire to avoid the appearance that these gifts are made to obtain access or engender the good will of those employees and officials. So long as a gift does not exceed \$100.00 in value and is not given because of an official action or legal duty to be taken, performed or violated, there is no prohibition within the code. Of course, there is no limitation on the value of a gift, provided that it is not given by a lobbyist, principal or employer of a lobbyist. If allowable, the code of ethics would require that the gift be reported, if not exempt from reporting requirements.

The issue presented primarily involves valuation. You have indicated that the Preserve sells individual tickets to the Gala dinner at \$75.00. Corporate donors purchase tables for 10 including the dinner and a tournament foursome for \$1500.00. This price reflects \$150.00 per person. The ethics commission interprets valuation consistently with the state statutes and as such, the cost of the event may not be divided so as to defeat the intent of the code.

IN SUMMARY, a county commissioner or employee who receives a space at a donor table from a lobbyist, principal or employer of a lobbyist has received a prohibited gift of \$150.00. Likewise, an advisory board member has received a prohibited gift of \$150.00 if the donor "lobbies the recipient's advisory board or any county department that is subject in any way to the advisory board's authority." Regarding tickets to the dinner that are not attached to a donor table, the cost of \$75.00 would not be prohibited under the threshold as contained in sec. 2-444 of the code. However, a second ticket provided to a spouse or other individual on behalf of the employee or

official is considered as having been provided with the intent to benefit the covered individual.² In this instance, the employee or official would be required, at the least, to pay for the second ticket.

It cannot be over emphasized that any gift, of whatever amount, must not be accepted in exchange for an act or omission on the part of the employee or official, and all allowed gifts over \$100.00 and not otherwise exempt under sec. 2-444((e)(1) must be reported.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

² CEO 91-04 (for purposes of gift reporting, travel expenses for official's wife are charged to official), CEO 05-05 (official must report additional admission provided by city enabling official to invite his spouse)

October 8, 2010

Sharon Rodgers
Palm Beach County Division of Senior Services
Datura Senior Services
801 Datura Street
West Palm Beach, FL 33401

Re: RQO 10-026
REAP Grant

Dear Ms. Rodgers,

YOU ASKED in your e-mail of September 27, 2010, whether you, as a county employee with the Division of Senior Services, may complete the landlord section of an application for the Resident Education Action Program (REAP) as an unpaid property manager for your family's rental property. Additional information was provided by e-mail on September 29th & 30th, 2010.

IN SUM, so long as you receive no compensation for being property manager and do not use your official position to "take or fail to take any action, or influence others to take or fail to take any action" that will result in a financial benefit to you or your sister or other relative as described in sec. 2-443(a)(2), there is no code of ethics prohibition in assisting your sister as property manager and processing the required landlord section of the REAP application.

THE FACTS as we understand them are as follows:

You are a county employee with the Division of Senior Services. During off duty hours you manage rental property owned by your family and titled in your sister's name. You receive no compensation for your work as property manager. A prospective tenant has obtained an assistance grant from the county administered Resident Education to Action Program (REAP). REAP is a state funded rental assistance program awarded to Palm Beach County Housing and Community Development (HCD) and is administered and operated by the Palm Beach County Division of Human Services. Applicants eligible for this grant may receive up to \$5,000.00 in assistance to cover costs of first and/or last month's rent, security deposits and utility deposits and connection fees. Grant monies are paid directly to the landlord or utility company, and REAP is a one-time rather than an ongoing assistance program. You do not work directly for the Department of Human Services (DHS) which oversees the grant, however, the Division of Senior Services and the DHS are both within the Department of Community Services (DCS).

You stated that the REAP program is not connected with the Division of Senior Services and that you have no authority over any aspect of the REAP program. In addition, you have no relationship with the prospective tenant and receive no compensation from your family. Compensation from the REAP grant would be forwarded directly to your sister as the landlord.

THE LEGAL BASIS for this opinion is found in the plain language of the following code of ethics sections:

Sec. 2-443(a) prohibits you from using your official position to obtain a financial benefit for yourself, your family members, including your sister, or an outside business, customer or client. An outside business includes any

entity, other than government, from which you receive compensation. You have indicated that you are not being compensated for your work as property manager. However, any benefit derived by your sister may violate this section if you use your official position on her behalf or on behalf of other family members.

Sec. 2-443(c) prohibits a county employee from entering into any contract or other transaction for goods or services with the county. This prohibition extends to the employee's outside employer or business. Again, since you receive no compensation from your family, this section would ordinarily not apply. However, if you personally become a party to the contract by signing the application for the REAP compensation, this may constitute a prohibited contractual relationship, even if you are not receiving any proceeds from the transaction. If you are merely filling out the relevant portions of the landlord section for your sister and your sister is the signor of the agreement, then this section would not apply.

You mentioned in your e-mail of September 27, 2010 that "at this point, I have received no compensation in my capacity as property manager." Be advised that if you at any time begin to receive compensation, including money or anything else of value, for your work as property manager, the prohibitions of sec. 2-443(c) become active. At that point, your property manager position would involve an "outside employer or business" and the renter may become a "customer or client" of your employer or business if the rental amount exceeds \$10,000.00 during a 24 month period.

Should your relationship transform into an outside employment or business, the contractual relationship with the county under the REAP program would be prohibited under sec. 2-443(c). In addition, you would not be able to obtain a waiver of the prohibition under the waiver provisions of sec. 2-443(d)(5) if you work in the county department which will "enforce, oversee or administer the subject contract." Both your department and DSS are within the Department of Community Services.

IN SUM, so long as you are not being compensated, do not yourself enter into any contracts with the county on behalf of your sister/family and do not use your official position to benefit your sister/family, you are not prohibited from assisting them in managing their property. In order to ensure that there is no appearance that you are using your official position to benefit your sister/family, there should be no authority or connection whatsoever between your position and any aspect of the REAP program. The obligations of the code of ethics are ongoing. If there is likelihood that you will one day be compensated for your work as property manager, depending on the status of your sister's REAP contracts with the county, you may at that time be violating the prohibited contracts section of 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

MEMORANDUM

To: Commission on Ethics
From: Alan Johnson, Executive Director
Date: September 24, 2010
Re: Complaint C10-004

- **Recommendation**

Regarding Respondent, Priscilla Taylor, Palm Beach County Commissioner, the Staff recommends a finding of LEGALLY SUFFICIENT be entered in case number C10-004.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

Complainant, Crystal Mathews, a county employee, filed the above referenced complaint against Respondent Commissioner Priscilla Taylor. The Complainant is the daughter of Vincent Goodman, who is running against Respondent for the position of county commissioner. On June 12, 2010, Office of Community Revitalization hosted a luncheon honoring graduates from a five week Resident Education to Action Program (REAP). The function took place at an area hotel. Members of the community attended as well as county commissioners and county staff.

County policy and procedure prohibits employees from participating in campaign activities during working hours or on public property. During the luncheon, a political advertisement was found on one of the tables promoting Mr. Goodman for county commission. According to the allegations submitted by Complainant, she was never accused of personally engaging in political activity at the luncheon but was nonetheless disciplined with a written reprimand for allowing the activity to take place. Respondent attended the luncheon and was sitting at the table containing the offensive literature. Complainant alleges that upon being disciplined, she asked her supervisor, also present at the event, who directed the disciplinary action and was told that he was instructed to "take care of the situation." The Complainant did not personally hear this directive but believed it was given by Respondent.

- **Analysis**

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the county code of ethics. Article XIII, sec. 2-443(a) prohibits an official from using his or her official position to, among other things, "influence others to take or fail to take any action" that will result in a financial benefit to himself or herself.

Depending upon the factual scenario, the nexus between an official's salary and an allegation of an official action to misuse his or her position to retain that position could rise to the level of a violation of sec. 2-443(a).

- **Conclusion**

Because sufficient information accompanying the complaint, if true, could support a violation of the code of ethics, Complaint C10-004 against Respondent Priscilla Taylor is LEGALLY SUFFICIENT. Therefore, an investigation into this matter should proceed.

COMMISSION ON ETHICS

REPORT OF INVESTIGATION

Case Number: K10-001

Investigator: Alan S. Johnson

Date Opened: September 24, 2010

Date Closed: September 30, 2010

Allegation:

The Commission on Ethics received a complaint from Crystal Mathews, a county employee, who advised that she had been disciplined for allowing political literature to be distributed during a county function at a private hotel. Ms. Mathews' father, Vincent Goodman, is running for county commission against Respondent, a sitting commissioner, who was in attendance at the function. Ms. Mathews had previously discussed with supervisors whether she could be a volunteer campaign manager for her father; however, she decided not to do so. Ms. Mathews alleges that she was disciplined because Respondent instructed her supervisor to do so.

Applicable Legislation:

Art. XIII, sec. 2-443 Prohibited Conduct

- (a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a financial benefit, not shared with members of the general public, for any of the following persons or entities: (1) himself or herself.

Investigation:

1. Background Information:

- a. Complainant provided a copy of the disciplinary referral, a memorandum from Houston Tate, Director of the Office of Community Revitalization, and a memorandum from Complainant Crystal Mathews to Houston Tate in "Rebuttal to Disciplinary Actions". In addition, a program of events, seating chart and memorandum of Vincent Goodman was provided. There is no evidence to indicate that Complainant was actively aware that political material had been distributed at the function. Complainant was in charge of the function for the county.
- b. The seating chart confirmed that the following persons were seated at the table where political literature was found: Houston Tate, Commissioner Priscilla Taylor, Commissioner Shelly Vana, Dr. Jay Matteson and Verdenia Baker. Mr. Tate is Complainant's supervisor and Ms. Baker is Assistant County Administrator and supervisor to Mr. Tate.
- c. In a memorandum to Mr. Tate dated August 2, 2010, the Complainant states that on July 30, 2010 she met with Mr. Tate and was given a written reprimand for violating county policy by allowing political literature to be distributed at a county event. Ms. Mathews

alleges that Mr. Tate state that although he personally did not believe that her actions were planned or intentional; he was "instructed to 'take care of the situation'. Mr. Tate informed her that there was a discussion by a panel regarding appropriate action.

2. Interviews:

- a. On Monday, September 27, 2010, I interviewed Houston Tate. Present was Administrative Assistant, Gina Levesque. Mr. Tate was placed under oath and the interview was recorded. Mr. Tate was familiar with the events of June 12, 2010. According to Mr. Tate, there was event literature on the table at the luncheon. A copy of a political brochure was brought to his attention but he could not recall by whom. He was told to look into the matter as this was against county policy but was never told to do anything in particular or discipline anyone. Mr. Tate believed that the Complainant, knowing that her father was running a campaign, had a duty to inform him not to do so during a county function. Complainant's failure to prevent the incident was grounds for discipline. He recalled meeting with Human Resources Director, Wayne Condry about the matter and they both determined that a reprimand was warranted. At no time did Mr. Tate have a conversation on the matter with Commissioner Taylor or anyone connected with her. He did not feel compelled or pressured in any way. He was just doing his job as he saw it and was not singling Complainant out for punishment.
- b. On Wednesday, September 29, 2010, I spoke with Verdenia Baker at her office. I asked her to recount the events of June 12, 2010. She recalled being shown a political circular at the luncheon while sitting at her table. It was brought to her attention by Commissioner Taylor who asked her if political literature was permitted at a county function. Ms. Baker said it was not. At no time did Commissioner Taylor instruct her or ask her to do anything about the literature. Verdenia Baker independently requested that Houston Tate look into the matter.

3. Documents:

- a. Written reprimand
- b. Memorandum from Houston Tate to Complainant
- c. Memorandum from Complainant to Houston Tate

Summary of Investigation:

- a. A county employee filed a sworn, written complaint alleging that a county commissioner misused her authority to have subordinates punish her for allowing political literature of the commissioner's opponent to be disseminated at a county function.
- b. Interviews with Complainant's two supervisors, present at the county function, were taken to determine whether the Respondent had anything to do with the internal investigation and discipline of the Complainant.

- c. The investigation confirmed that Respondent had no involvement whatsoever in the internal county process and did not use her authority in violation of sec. 2-443(a) of the Palm Beach County Code of Ethics.

Conclusion:

The above matter has been investigated and it appears that Respondent, Commissioner Priscilla Taylor, did not violate the Palm Beach County Code of Ethics. The case is closed.

MEMORANDUM OF NO PROBABLE CAUSE

To: Commission on Ethics
From: Alan S. Johnson, Executive Director
Date: October 1, 2010
Re: Complaint C10-004

- **Recommendation**

A finding of NO PROBABLE CAUSE should be entered in the above captioned matter as to the allegations made in the Complaint. Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Priscilla Taylor, should be charged with violating the Palm Beach County Code of Ethics.

- **Jurisdiction**

COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

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.

Article XIII, sec. 2-443(a) prohibits a public official from using his or her office to "...take or fail to take any action, ***or influence others to take or fail to take any action...***" that will result in a financial benefit to "himself or herself".

- **Background**

The instant Complaint was filed by county employee Crystal Mathews on September 13, 2010. The Complaint alleges that during a county function on June 12, 2010, campaign literature was distributed by her father, a candidate for county commission. The function was not on county property. Complainant was in charge of the function. Complainant was ultimately reprimanded for allowing inappropriate campaign material to be distributed at a county function in violation of county rules. When Complainant objected to her supervisor, he allegedly said that he knew her actions were not planned or intentional but that he was "instructed" to "take care of the situation." Complainant did not personally hear the directive. She believed that Respondent, present at the function and running against Complainant's father for county commission, misused her official position by instructing county staff to reprimand Complainant.

- **Facts**

On June 12, 2010, the Office of Community Revitalization hosted a luncheon honoring graduates from the Resident Education to Action Program (REAP) at a local hotel. In attendance were participants, guests, county employees and officials. Among the attendees were Respondent and her political opponent who is the father of Complainant. It is uncontroverted that campaign literature featuring Complainant's father was found on a table. Guests at that table included Respondent, and several other officials and employees including another county commissioner, Complainant's supervisor, Houston Tate, and his supervisor, Assistant County Administrator, Verdenia Baker.

Pursuant to an investigation, Houston Tate gave a sworn statement on September 27, 2010. At the luncheon, he was made aware of the literature but did not recall by whom. He personally felt that the literature was a violation of county rules and that Complainant, who was in charge of the event and knew her father was present, had a duty to prevent him from engaging in political activity during the county event. At no time was he ordered, pressured or otherwise advised to reprimand the Complainant by the Respondent. He did not recall speaking with Respondent about the issue.

On September 29, 2010, Verdenia Baker was interviewed. She recalled being shown a political circular at the luncheon while sitting at her table. It was brought to her attention by the Respondent who asked her if such political material was permitted at a county function. Ms. Baker told Respondent that it was not. At no time did Respondent instruct Ms. Baker or ask her to take any action regarding the material. Ms. Baker stated that she independently requested that Mr. Tate look into the matter.

- **Conclusion**

There is no probable cause to believe that Respondent has violated sec. 2-443(a) of the Palm Beach County Code of Ethics. The facts obtained during the investigation are uncontroverted that Respondent did not misuse her official position by ordering staff to reprimand the daughter of her political opponent. Therefore, there are no reasonably trustworthy facts and circumstances for the COE to conclude that Respondent should be charged with violating sec. 2-443(a) of the Palm Beach County Code of Ethics.

By: _____

Alan S. Johnson
Executive Director
Florida Bar # 223352
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561-233-0720

MEMORANDUM

To: Commission on Ethics
From: Alan Johnson, Executive Director
Date: September 29, 2010
Re: Complaint C10-005

- **Count 1 of the Complaint**

- **Recommendation**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count one of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

Complainant, Andrew Schaller, a private citizen, filed count 1 of the above referenced Complaint against respondent Jess Santamaria. The complaint alleges that Commissioner Santamaria misused his public position by directing his administrative assistant, Johnnie Easton and his secretary, Dennis Lipp, both county employees, to perform campaign activities while on county time. Three purported e-mails were provided as public records. Two e-mails were purportedly sent to campaign representatives of Commissioner Santamaria. The first e-mail was sent by Mr. Easton on July 27, 2010 at 12:01 pm. The second e-mail was sent by Johnnie Easton on August 5, 2010 at 5:00 pm. Both e-mails contained public records regarding Palm Beach County Glades area project funding FY 2007-2011. They ultimately appeared in town newspaper articles featuring Commissioner Santamaria. The last document purports to be an e-mail however no recipient or time is listed other than the words "start: Thu 05/13/2010 6:00pm" and "end Thu 05/13/2010 7:30 pm." The document requests that "Jess' petitions" be printed up. The complaint alleges a violation of Florida Statute s. 106.15(3)(a candidate's prohibited use of services "of any state, county, municipal, or district officer or employee during working hours")

- **Analysis**

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a), the jurisdiction of the commission on ethics extends to the county code of ethics, county post-employment and lobbyist registration ordinances. Election law violations are within the jurisdiction of the Florida Elections Commission, or if criminal, the office of the state attorney.

Applying the submitted documents and allegations to the code of ethics, we review the facts to determine whether reliable information accompanying the Complaint points to actions that may violate the Palm Beach County Code of Ethics:

Sec. 2-443(a) states as follows:

Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (1) Himself or herself

The information provided does not on its face allege a violation of s. 2-443(a). The e-mails submitted reflect activity during the lunch hour and at 5:00 pm. They also reflect public records activity that on its face involve county business. The third document does not appear to be an e-mail and its time and place cannot be determined. In fact the time referenced in the document is not during normal working hours.

- **Conclusion**

Violations of s. 106.15(3)(use of state services of employees during working hours in furtherance of candidacy) are within the jurisdiction of the Florida Elections Commission and/or the Office of the State Attorney.

The allegation contained in count 1 does not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusation is true or false. While acknowledging for purposes of legal sufficiency that the use of one's office to secure reelection and an official salary may, in some instances, be a sufficient financial benefit to constitute a violation of the code, the facts as stated do not rise to such a level. The Ethics Commission is without jurisdiction to investigate, therefore count one of Complaint C10-005 against respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 2 of the Complaint**

- **Recommendation**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 2 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

Complainant, Andrew Schaller, a private citizen, filed count 2 of the above referenced Complaint against Respondent Jess Santamaria. The complaint alleges that on 07/27/2010 the Respondent was hosting a public open forum at a location owned by the Respondent. Respondent attempted to have Complainant "trespassed and removed" from the premises. Sheriff's Deputies were called and an offense report was filed. According to the offense report, the Respondent never

mentioned or used his title as county commissioner in his discussions with police over the issue of removing the Complainant.

- **Analysis**

In count 2 of his complaint, Respondent alleges a violation of chapter 112, part III, s. 112.313(6) Florida Statutes (“Misuse of public position...to secure a special privilege, benefit, or exemption for himself, herself, or others.”)

An alleged violation of Florida state ethics statutes or criminal laws is not within the jurisdiction of the ethics commission. The facts as stated do not support a violation of the Palm Beach County code of ethics. The Respondent did not use his title or office to obtain a financial benefit not shared with similarly situated members of the general public (sec. 2-443(a)(misuse of public office or employment). The attempt to remove Complainant from the premises was based upon Respondent’s ownership of the premises and not Respondent’s official position.

- **Conclusion**

The allegations contained in count 2 of the Complaint do not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusations are true or false. Because the allegations do not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore count two of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 3 of the Complaint**

- **Recommendation:**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 3 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

Complainant, Andrew Schaller, a private citizen, filed count 3 of the above referenced Complaint against Respondent Jess Santamaria. The Complainant, who is running against the Respondent for the Office of County Commissioner, requested copies of Respondent’s computerized appointment calendars as well as his hand-held pocket calendars for the past 3 years. Respondent did not retain pocket calendars. The complaint alleges that the Respondent violated Florida public records laws.

- **Analysis**

Count 3 of the Complaint alleges a violation of s. 119.07(1) Florida Statutes. Florida State Statutes are not within the jurisdiction of the Palm Beach County Commission on Ethics.

- **Conclusion**

The allegations contained in count 3 of the Complaint do not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusations are true or false. Because the allegations do not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore count three of complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 4 of the Complaint**

- **Recommendation**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 4 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

Complainant, Andrew Schaller, a private citizen, filed count 4 of the above referenced Complaint against respondent Jess Santamaria. It is alleged that Respondent displayed a campaign sign without the disclaimer required by state law.

- **Analysis**

Count four of the complaint alleges a violation of s. 106.143 Florida Statutes. Florida State statutes are not within the jurisdiction of the Palm Beach County Commission on Ethics. State campaign violations are the jurisdiction of the State Elections Commission.

- **Conclusion**

The allegations contained in count 4 of the Complaint do not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusations are true or false. Because the allegations do not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore count four of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 5 of the Complaint**

- **Recommendation**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 5 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

Complainant, Andrew Schaller, a private citizen, filed count 5 of the above referenced Complaint against Respondent Jess Santamaria. Count 5 alleges that the Respondent violated county rules and procedures in a quasi-judicial hearing in 2007 involving a Callery Judge Grove zoning application. Complainant alleges that Respondent staged a campaign against the application and ignored an apparent conflict of interest by taking part in the hearing.

- **Analysis**

Pursuant to Chapter 2, Article V, Division 8, Section 2-260.6 of the Palm Beach County Code, the Commission on Ethics is empowered to consider alleged violations within its jurisdiction committed on or after the effective date of the ordinances as set forth in Section 2-258(a). The effective date of these ordinances is May 1, 2010. The Ethics Commission has no authority to investigate or enforce alleged violations of the code of ethics occurring prior to May 1, 2010.

- **Conclusion**

Because the allegations contained in count 5 of the Complaint involve actions alleged to have taken place prior to May 1, 2010, the Ethics Commission is without jurisdiction to investigate, therefore count five of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 6 of the Complaint**

- **Recommendation:**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 6 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background:**

Complainant, Andrew Schaller, a private citizen, filed count 6 of the above referenced Complaint against respondent Jess Santamaria. Count 6 alleges that the Respondent improperly ordered business cards and had the locks repaired at the Belle Glade County Courthouse without following Palm Beach County procurement procedures.

- **Analysis:**

Complainant submitted invoices and e-mails regarding two purchases. First, business cards were obtained from PRINT-IT plus on or around March 25, 2010. This allegation pre-dates the May 1, 2010 effective date of the code. Second, the locks at the Belle Glade Courthouse were purportedly repaired; however, documents submitted show only an estimate provided on 07/25/2010. A number of e-mails were also provided reflecting approval by the Palm Beach County Sheriff's office as well as notice to Facilities Department Director Audrey Wolf and County Administrator Bob Weisman. There is no submission indicating that the two transactions involved a violation of the code of ethics or otherwise involved a prohibited financial gain to the Respondent. In fact, the complaint merely alleges a violation of internal county procurement policy.

- **Conclusion:**

Regarding the first part of count 6 of the Complaint, because the allegations contained in the complaint involve actions alleged to have taken place prior to May 1, 2010, the Ethics Commission is without jurisdiction to investigate, therefore part one of count six of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

The allegations contained in the second allegation in count 6 of the Complaint do not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusations are true or false. Because these allegations do not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore part two of count six of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 7 of the Complaint**

- **Recommendation:**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 7 of Complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background:**

Complainant, Andrew Schaller, a private citizen, filed count 7 of the above referenced Complaint against respondent Jess Santamaria. Count 7 alleges that the Respondent has been convicted of a felony.

- **Analysis:**

Complainant submitted a document purported to be a non-certified 1991 felony judgment in the name of Jesus R. Santamaria. No additional supporting documentation was provided. No other biographical information (date of birth, social security number) were provided. No firsthand

knowledge of the accuracy of this document was provided. Under the submission, Complainant wrote the following, "Does Santamaria have a felony record." The allegation does not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusation is true or false. In addition, no first-hand knowledge of the veracity of this allegation is apparent from the submission.

- **Conclusion:**

Because the allegation contained in count seven of the Complaint does not sufficiently state a violation within the jurisdiction of the Commission on Ethics and furthermore are not *based substantially on the personal knowledge of the complainant*, it is without jurisdiction to investigate, therefore count seven of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 8 of the Complaint**

- **Recommendation**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 8 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background:**

Complainant, Andrew Schaller, a private citizen, filed count 8 of the above referenced Complaint against Respondent, Jess Santamaria. Count 8 alleges that the Respondent had campaign workers handing out his candidate signature petitions at an open community forum on 04/21/2010. The petitions were "placed on the sign-in table and campaign workers were actively seeking signatures while the forum was taking place." The forum is held monthly and begins at 7:00 pm.

- **Analysis:**

The allegations of count 8 of the complaint do not state a violation of the Palm Beach County Code of Ethics. The alleged activity took place at approximately 7:00 pm and there is no indication that county employees were conducting personal campaign activities while on county time. Regarding any alleged violation of Florida elections laws, that issue would need to be reviewed by the Florida Elections Commission.

- **Conclusion:**

The allegations contained in count 8 of the Complaint do not support a violation of the Palm Beach County Code of Ethics, regardless of whether or not the accusations are true or false. Because the allegations do not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore count

eight of complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 9 of the Complaint**

- **Recommendation:**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 9 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background and analysis:**

The allegations of count 9 are a restatement of those contained in count 1. No additional information is provided.

- **Conclusion:**

Because the allegations contained in count nine of the Complaint are a restatement of count one which does not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore count nine of Complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

- **Count 10 of the Complaint**

- **Recommendation:**

Regarding Respondent, Jess Santamaria, Palm Beach County Commissioner, the Staff recommends a dismissal as NOT LEGALLY SUFFICIENT be entered in count 10 of complaint number C10-005.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background:**

Complainant, Andrew Schaller, a private citizen, filed count 10 of the above referenced Complaint against Respondent, Jess Santamaria. Count 10 alleges that Dennis Lipp, county employee, used county equipment and improperly worked on Town of Loxahatchee Groves issues while on county time.

- **Analysis:**

Only one sworn Complaint containing 10 “exhibits” was filed against Respondent. The 10th exhibit or count alleges that a different county employee violated the code of ethics by working on issues involving an entity other than the county during work hours. Public records of county e-mails between Mr. Lipp and individuals involving various Town of Loxahatchee Groves issues were provided to support the allegation. The information provided in count 10 was not properly submitted pursuant to the requirements of the code.

In the interest of efficiency, if count 10 were to be re-filed and submitted in proper form, the facts as submitted would not, in and of themselves, constitute a violation of the code of ethics. Definitions as contained in sec. 2-442 include the following:

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered...(emphasis included)

Assuming Mr. Lipp is a paid or unpaid official for the town of Loxahatchee Groves, he would not be subject to sec. 2-443(c) (prohibited contracts) and would only be subject to subsection (a) if he were to use his official position to benefit himself in a manner not shared with similarly situated members of the general public (sec. 2-443(a)). No such allegation is supported or otherwise indicated in the public records provided.

The Complaint itself refers to a violation of PBC Employment Merit System Rules and Regulations, Rule 10.02(a). A violation of employment rules is an internal matter and not within the jurisdiction of the Commission on Ethics.

- **Conclusion:**

Because the allegations contained in count 10 of the complaint are not properly sworn to under oath in proper form, and additionally, even if true, do not sufficiently state a violation within the jurisdiction of the Commission on Ethics, the commission is without jurisdiction to investigate, therefore count ten of complaint C10-005 against Respondent Jess Santamaria is NOT LEGALLY SUFFICIENT and should be dismissed.

Agenda item IX(a) E-mail domain names

Discussion:

Whether to change the COE designation for e-mails from @pbcgov.org to an address not affiliated with Palm Beach County on its face. The cost to register a domain name is \$115.00 for 5 years.

Available domain names are as follows:

We currently own palmbeachcountyethics.com

Palmbeachcountyethics.org

Palmbeachcountyethics.net

Pbc-ethics.org

Ethicsforpbc.com

Ethicsforpbc.org

Ethicsingov.com

Ethicsingov.org

Ethicscommission.org

Ethicscommissionpbc.com

Ethicscommissionpbc.org

Coepbc.com

Coepbc.net

Pbccoe.com

Pbccoe.net

Agenda item IX(b) Press Releases/Releasing documents to the press

Discussion:

To what extent should staff issue press releases on behalf of the COE for advisory opinions, public reports and final orders (dismissal, finding of p/c and final orders finding violation)? Currently, all advisory letters and public orders are published on the COE website.

Agenda item X(b) Consideration of Code Revision to 2-443(a)

Analysis: Currently, the county code prohibition against misuse of public office or employment prohibits only acts or omissions resulting in a financial benefit to specified individuals or entities. There is no current prohibition that deals with misuse of position for other than financial gain. The state version of misuse of public office (s.112.313(6)) includes using an official position to "...secure a special privilege, benefit, or exemption for himself, herself, or others."

Staff Recommendation: Consider the following revision to Art. XIII, sec. 2-443

Sec. 2-443. Prohibited conduct.

- (a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a financial benefit, not shared with similarly situated members of the general public, or to secure a special privilege, benefit, or exemption for any of the following persons or entities: