



# Agenda

November 3, 2011  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

## Executive Session from 1:45pm to 2:15pm Regular Agenda will being at 2:15pm

### Palm Beach County

#### Commission on Ethics

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#### Commissioners

Edward Rodgers, Chair

Manuel Farach, Vice Chair

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

#### Executive Director

Alan S. Johnson

#### Executive Assistant

Gina A. Levesque

#### Staff Counsel

Megan C. Rogers

#### Senior Investigator

Mark E. Bannon

#### Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 6, 2011
- V. Executive Session (1:45 pm – 2:15 pm)
  - a. C11-019
  - b. C11-020
- VI. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 11-095
  - b. RQO 11-098
- VII. Items Pulled from Consent Agenda
  - a.
- VIII. City of Boca Raton Advisory Board Conflicts (previously tabled)
  - a. RQO 11-067 (resubmitted)
  - b. RQO 11-076 (resubmitted)
- IX. Proposed Advisory Opinions
  - a. RQO 11-089
  - b. RQO 11-090
  - c. RQO 11-091
  - d. RQO 11-092
  - e. RQO 11-093
  - f. RQO 11-094
  - g. RQO 11-096
  - h. RQO 11-097
- X. Rules of Procedure Amendments
  - a. Section 2.8(g)
  - b. Section 5.8
- XI. Executive Director Comments
- XII. Public Comments
- XIII. Adjournment

## **MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS**

**I. CALL TO ORDER:** October 6, 2011, at 2:25 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  
Robin N. Fiore, Ph.D.  
Ronald E. Harbison, CPA  
Bruce E. Reinhart, Esq. – Arrived later

#### **STAFF:**

Mark E. Bannon, COE Investigator  
Alan S. Johnson, Esq., COE Executive Director  
Gina A. Levesque, COE Administrative Assistant  
Megan C. Rogers, Esq., COE Staff Counsel  
Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

Judge Edward Rodgers stated that a quorum was present.

### **III. INTRODUCTORY REMARKS**

Judge Rodgers stated that an executive session was called following the minutes' approval.

### **IV. APPROVAL OF MINUTES FROM SEPTEMBER 1, 2011**

**MOTION to approve the September 1, 2011, minutes. Motion by Robin Fiore, and seconded by Ronald Harbison.**

Commissioner Manuel Farach pointed out that page 22 of the minutes contained an error in the vote total.

**SUBSTITUTE MOTION to correct the minutes to reflect a vote total of 3-1 on item XIII.i. to show Judge Rodgers opposed and Bruce Reinhart absent. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.**

#### **IV. – CONTINUED**

**MOTION to approve the September 1, 2011, minutes as amended. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

#### **RECESS**

**At 2:30 p.m., the chair declared the meeting recessed for an executive session.**

#### **V. EXECUTIVE SESSION (2:15 p.m. – 4:00 p.m.)**

#### **RECONVENE**

**At 4:35 p.m., the meeting reconvened with Judge Rodgers, Manuel Farach, Robin N. Fiore, Ronald E. Harbison, and Bruce E. Reinhart present.**

Judge Rodgers requested that Vice Chair Manuel Farach read the public report and findings of probable cause. He announced that copies of findings were available for interested parties.

#### **V.a. C11-017**

Commissioner Farach stated that the Commission on Ethics (COE) found that probable cause existed, and that a complaint against Conrad Saddler was set for final hearing. He said that the complaint was legally sufficient. It was found that Mr. Saddler should not have distributed examinations under the finding of probable cause, he said.

#### **V.b. C11-018**

Commissioner Farach stated that the COE found that probable cause existed, and that a complaint against Debbie Crow was set for final hearing. He said that the findings were that Ms. Crow, a supervisor, was aware that a test with answers was distributed and that she did nothing to stop the distribution.

Commission on Ethics Executive Director Alan Johnson informed the group that copies of final reports were on a chambers lectern, and that they could be viewed on the COE Web site within 24 hours.

**V.c. C11-015**

Commissioner Farach stated that the COE found no probable cause in the complaint against Lee Effingwell, and that no further proceedings were planned. He said that the matter was dismissed.

**V.d. C11-016**

Commissioner Farach stated that the COE found no probable cause in the complaint against William Albury, and that no further proceedings were planned.

**VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**VI.a. Request for advisory opinion (RQO) 11-057**

**VI.b. RQO 11-062 (resubmitted)**

**VI.c. RQO 11-063 (resubmitted)**

**VI.d. RQO 11-069**

**VI.e. RQO 11-075**

**VI.f. RQO 11-077**

**VI.g. RQO 11-078**

**VI.h. RQO 11-079**

**VI.i. RQO 11-080**

**VI.j. RQO 11-082**

**VI.k. RQO 11-083**

**VI.l. RQO 11-086**

**VI.m. RQO 11-087**

**VI. – CONTINUED**

**Motion to approve the consent agenda. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.**

**VII. ITEMS PULLED FROM CONSENT AGENDA - None**

**VIII. PUBLIC SAFETY EMPLOYEE PROGRAMS FOR THE TOWN OF PALM BEACH**

**VIII.a. RQO 11-056**

**VIII.b. RQO 11-081**

(CLERK'S NOTE: Items VIII.a. and VIII.b. were presented in tandem.)

Commission on Ethics Staff Counsel Megan C. Rogers stated that:

- Items VII.a. and VII.b. concerned public safety employee programs for the Town of Palm Beach (Town).
- Item VIII.a. concerned financial assistance grants available to Town police department employees who experienced emergencies that were not protected by insurance, such as fires and illnesses.
- Town employees were prohibited from soliciting donations from vendors or lobbyists of the Town on behalf of the Palm Beach Police Foundation by the Code of Ethics (Code) provision that considered such solicitation as use of official positions for personal benefit.

**MOTION to approve the proposed opinion letter RQO 11-056. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.**

Ms. Rogers stated that:

- Item VIII.b. concerned scholarship programs dedicated to children of Town fire-rescue and police department employees.
- Under the scholarship program, children alone gained financial benefits.

### **VIII.a. and VIII.b. – CONTINUED**

- No direct financial benefits were collected by any employee who solicited on behalf of himself or herself or another employee until that employee's child was eligible.
- Town employees were not prohibited from soliciting scholarship program donations from persons and entities that were not vendors, lobbyists, principals or employers of lobbyists so long as no quid pro quo or other special benefit was gained for performing an official act, past, present, or future, as a public duty.

**MOTION to approve proposed advisory opinion letter RQO 11-081. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 5-0.**

### **IX. CITY OF RIVIERA BEACH DISCRETIONARY FUNDS**

#### **IX.a. RQO 11-084**

Mr. Johnson stated that:

- The mayor of the City of Riviera Beach (City) requested a written advisory opinion concerning whether City council members had the legal ability to direct funds from Waste Management of Florida, Inc., (WMF) a City vendor, to charitable events, not-for-profit organizations, or City functions or projects.
- Individual council members currently determined which organizations or programs received WMF donations for public purposes, and those were vetted by the City manager and the City attorney.
- The funds available to the City council pursuant to the City's contract with WMF totaled \$90,000 annually. The stipend existed for the duration of the WMF contract, and it was a part of the contract negotiated by the City.
- A City council resolution established a matrix for funds distribution, but the funds were not directed to the City budget for deposit. Instead, WMF checks were delivered directly to the charitable organizations or programs identified by the council members.

## IX.a. – CONTINUED

- Discussions were held at City council meetings after the distributions had already occurred.
- Staff submitted that:
  - The Code prohibited any member of a local governing body or mayor or anyone on his or her behalf from soliciting or accepting, directly or indirectly, any gift valued at more than \$100 annually from any person or entity that was a vendor of a municipality.
  - Waste Management of Florida, Inc. was a vendor of the City.
  - The prohibition did not apply to gifts that were solicited or accepted by municipal officials on behalf of the municipality for use solely by the municipality for public purposes.
  - The discretionary funds never became part of the City's general revenue; instead, they were given by WMF to various organizations under the direction of a single elected official.
- The donations were expended for specific non-government uses by a vendor at the direction of elected officials, and were considered transfers of value within the Code.
- While the donations were not made part of the City's account, they were not used solely by the City for public purposes; therefore, they were not exempt from the vendor gift prohibition of \$100 maximum in any calendar year.
- The current distribution of WMF funds of more than \$100 to any non-city entity or program in this manner was prohibited by the Code. If a WMF distribution arrived at a City department, it would be used by the City for a public purpose since the funds were made part of the City's budget or account.

## IX.a. – CONTINUED

- A City council member was allowed at any time to solicit WMF or any vendor as part of a contract or separately and apart to give money to the City for public purposes.

Judge Rodgers expressed concern over the potential for vendor donations being accepted for public use and then channeled to the complete, unbridled control of a City council member. He said that embezzlement of public funds for private purposes was a danger, and that the COE would provide no consolation and support for such activity.

Riviera Beach City Attorney Pamala Ryan stated that she and the City manager reviewed donations requests, to comply with a City resolution to give \$7,500 each quarter to nonprofit agencies or to City programs that assisted City residents. The City parks and recreation department, she said, sponsored a bus trip annually for students to attend a Miami Dolphins football game. Any cash gift made by Mayor Thomas Masters or a council member for trip expenses was considered a public purpose use, she added.

Judge Rodgers said that the COE's chief principle was that municipal money must not be used to ingratiate officials with others and receive a personal benefit. Mayor Masters' use of money for a particular group or person to incur votes violated the Code, he said.

Commissioner Bruce Reinhart stated that appearances of gifts to officials, and not to the City, created such ambiguity that substantial questions were raised as to whether solicitations or gifts were made on the City's behalf. He said that the City retained broad choices about public purpose expenditures once the money was received by the City.

Commissioner Robin Fiore suggested that City council members make public decisions together about giving to charities of their choice. She said that many charities operated exclusionary programs that benefited only a small group or discriminated against others in the community.

Commissioner Ronald Harbison commented that the potential existed for money to be directed to charities that lacked transparency. He said that the remedy was for a committee composed of City council members or others to determine appropriate use of funds.



## **IX.a. – CONTINUED**

Ms. Ryan said that the City would change its program based on the COE's opinion letter and comments.

Commissioner Reinhart stated that the opinion letter's last page contained a reference to a grand jury report that he considered superfluous. He requested that it be stricken.

**MOTION to approve proposed advisory opinion letter RQO 11-084 as amended, striking the paragraph beginning with the words, The COE cannot opine. Motion by Bruce Reinhart, and seconded by Robin Fiore.**

**SUBSTITUTE MOTION to approve advisory opinion letter RQO 11-084 as amended, striking the paragraph beginning with the words, The COE cannot opine, striking the last sentence of the letter's third paragraph, and striking the last sentence of the paragraph beginning with, IN SUMMARY. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.**

Mr. Johnson asked staff to amend advisory opinion letter RQO 11-084 as follows:

- Strike the entire last-page paragraph starting with, The COE cannot opine.
- Strike the last sentence including the footnote of the paragraph beginning IN SUMMARY, starting with the words, Distribution to public entities or programs.
- Strike the first page's last sentence at the paragraph beginning IN SUM, starting with, However, distribution to City programs.

(CLERK'S NOTE: A second vote was taken.)

**MOTION to approve the amendments to opinion letter RQO 11-084 as suggested by Mr. Johnson. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.**

**X. CITY OF BOCA RATON ADVISORY BOARD CONFLICTS**

(CLERK'S NOTE: Items X.a. and X.b. were presented in tandem.)

**X.a. RQO 11-067**

**X.b. RQO 11-076**

Ms. Rogers stated that:

- Staff's interpretation of Code provisions concerning voting conflicts was that voting on a client's proposal, participating in conversations with, or attempting to influence, other advisory board members constituted a misuse of office.
- Staff further interpreted the Code to mean that municipal advisory board members may not participate in clients' project presentations to municipal boards or take part in any discussion regarding the project with other board members. Members were not prevented from processing client project matters with other boards or staff, provided that they did not use their official positions to obtain special financial benefits.
- The interpretation was based on Code language contained in the Disclosure of Voting Conflict section that read: County and municipal officials, as applicable, shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) of the Misuse of Office.

**PUBLIC COMMENT:** Joni Hamilton, City of Boca Raton assistant attorney.

**MOTION to accept, receive and file documents submitted by Joni Hamilton. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 5-0.**

(CLERK'S NOTE: Bruce Reinhart left the meeting.)

Mr. Johnson pointed out that State law's exclusion from the Code's voting conflicts section stipulated that a licensure-required position on a board allowed applicants to participate in board discussions and votes. The Code's language was stricter than State law, he said. The COE could change the Code's interpretation, he added.

## **X.a. and X.b. – CONTINUED**

Commissioner Fiore stated that she had heard no justification for a language revision concerning voting conflicts. Commissioner Harbison said that anyone who served on a board that his or her employer had business dealings with faced a problem.

Mr. Johnson stated that:

- Code language did not define the meaning of participation, and the State's language was not necessarily applicable to this county's municipalities.
- Discussion could resume at another meeting; in the interim, COE could draft more restrictive opinion letters.
- The COE's interpretation of the words, shall abstain, and, not participate, were key items of a future discussion. The words, not participate, could be interpreted very broadly to include time periods before, during, and after voting.

**MOTION to table the matter for later discussion. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 3-1. Robin Fiore opposed, and Bruce Reinhart absent.**

## **XI. PROPOSED ADVISORY OPINIONS**

### **XI.a. RQO 11-054**

Mr. Johnson said that:

- No evidence existed that discounted restaurant meals for Town of Palm Beach employees were provided as a quid pro quo, or exchange for any official public action whether past, present, or future performance of a legal duty.
- Public employee discounts may be exempted from the gift law prohibitions applicable to vendors, provided that they were not based on the preferred treatment of the vendor by the employee or official.

### **XI.a. – CONTINUED**

- The discounts applied to all other similarly situated government employees or officials.
- They were not targeted to an individual or to an office, and,
- They were not otherwise offered as a quid pro quo, or to otherwise convey a special benefit in violation of the Code's misuse of office or voting conflicts sections.

**MOTION to approve proposed advisory opinion letter RQO 11-054. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

### **XI.b. RQO 11-085**

Commission on Ethics Investigator Mark Bannon stated that:

- Town of Palm Beach Shores (PBS) Vice Mayor Lisa Tropepe was a partner of an engineering and consulting firm.
- Within the engineering firm, she had two separate types of contracts with various municipalities. One type required that she administer the project, and the other type required that she perform as the overall engineer by reviewing all projects that PBS undertook contractually.
- Her stepson was offered a truck-driver position with a contractor who may work on a project that she reviewed and oversaw within a municipality.
- Staff had concluded that when her firm was hired specifically on a contracted basis for a specific project, for which she had oversight responsibility only, and that she was not acting as a contract employer. The Code's misuse of office provisions did not apply.

#### **XI.b. – CONTINUED**

- Staff agreed that when she acted as an engineer for other municipalities that required her entire oversight, she was acting as a contract employee with a government purpose; therefore, she was prohibited from taking any official actions that gave her stepson's employer a special financial benefit.
- As a PBS council member, she and her outside business were prohibited from entering into any contract for goods and services with PBS, and from voting on or participating in any matter that gave a special financial benefit to her outside employer, her stepson, or his employer.

**MOTION to approve proposed advisory opinion letter RQO 11-085. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.**

#### **XI.c. RQO 11-088**

Mr. Bannon stated that:

- Joseph Panella served on two advisory boards for Boca Raton and he was a fulltime employee of AT&T, one of Boca Raton's vendors.
- The advisory boards he served on did not provide any oversight of the AT&T contract.
- Any planning oversight that arose required him to recuse himself from participation in discussions and votes.

Mr. Johnson said that the issue involved having a conflicting contract with the government served, rather than a misuse of office. He added that the Code specified that if he held no contract, and board responsibilities were chiefly to oversee and manage, he could serve without obtaining a waiver.

**MOTION to approve proposed advisory opinion letter RQO 11-088. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

## **XII. PROPOSED CHANGE TO RULE OF PROCEDURE 8.2**

Mr. Johnson stated that:

- Several rules changes were presented to the COE by staff last month.
- Two standards of proof – clear and convincing evidence and competent substantial evidence – appearing in the same context and written into the same sentence had received an objection from Commissioner Farach.
- While a finding must be supported by competent, substantial evidence, the standards as written were separated in a revised Rule 8.2.
- Staff drafted a separate section that read: Upon a public hearing, if the Commission on Ethics finds, by clear and convincing evidence, that a violation has been committed, the Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The final order shall include a determination as to whether the violation was intentional or unintentional. Findings by the Commission shall be supported by competent, substantial evidence.

**MOTION to approve Rule of Procedure 8.2 as amended. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.**

## **XIII. EXECUTIVE DIRECTOR COMMENTS**

### **XIII.a.**

**DISCUSSED:** Ethics Awareness Day.

Mr. Johnson stated that a proclamation declaring November 18 as Ethics Awareness Day was expected from the County. He said that Ms. Rogers would provide details at the November COE meeting.

### **XIII.b.**

**DISCUSSED:** Budget Reserve.

Mr. Johnson announced that \$90,000 remained as a reserve in the 2010-2011 budget. He said that the entire budget had not been spent for the fiscal year that ended on September 30, 2011.

**XIII.c.**

**DISCUSSED:** Salary Increases.

Judge Rodgers commented that a prior COE discussion about raises seemed to include the understanding that the HR department handled all requests for raises.

Mr. Johnson said that although there was no understanding that the HR department handled raises, the topic could not be discussed in Commissioner Reinhart's absence.

**XIII.d.**

**DISCUSSED:** Next Meeting.

Mr. Johnson said that the next meeting concerning the lobbying registration ordinance was set for October 31, 2011.

**XIV. PUBLIC COMMENTS – None**

**XV. ADJOURNMENT**

**At 6:25 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair

## **VI – SYNOPSIS – PROCESSED ADVISORY OPINIONS**

### **RQO 11-095 Amanda Liebl**

The Youth Program Director of the City of Boca Raton asked whether the City Recreation Services Department may charge food vendors at the City's Annual Winter Children's Fair based on a percentage of their sales and charge other non-food vendors a fixed cost per booth.

The municipal jurisdiction of the Commission on Ethics (COE) is limited to the Countywide Code of Ethics.<sup>1</sup> Opinions must be based upon the application of the code to a set of facts and circumstances. When a City makes a policy determination, the COE will not opine as to the suitability of the policy or procedure unless a section of the code is implicated.

### **RQO 11-098 Henry Esformes**

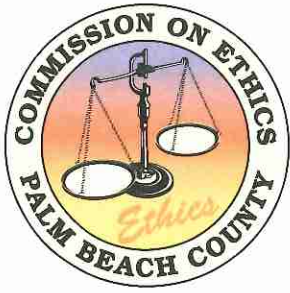
A County Public Safety employee asked whether he could accept a \$15 gift card from a client of the Highridge Family Center, a division of the Palm Beach County Public Safety department, in appreciation of the therapy provided in the course of his public employment.

Section 2-444(c) of the Palm Beach County Code of Ethics specifically prohibits an employee from accepting a gift because of "an official action taken" or "duty performed." The assistance provided was in the employee's official capacity and therefore he is prohibited from accepting the gift.

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<sup>1</sup> Article V, Division 8, section 2-258 (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) Countywide Code of Ethics;





# Palm Beach County Commission on Ethics

## Commissioners

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

## Executive Director

Alan S. Johnson

October 21, 2011

Ms. Amanda Liebl, Youth Program Director  
City of Boca Raton  
201 West Palmetto Park Road  
Boca Raton, FL 33432

Re: RQO 11-095  
Vendor prohibitions

Dear Ms. Liebl,

Your request for an 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 submission dated October 11, 2011 whether the City Recreation Services Department may charge food vendors at the City's Annual Winter Children's Fair on a percentage basis and charge other non-food vendors a fixed cost per table.

IN SUM, the municipal jurisdiction of the Commission on Ethics (COE) is limited to the Countywide Code of Ethics.<sup>1</sup> Opinions must be based upon the application of the code to a set of facts and circumstances. When a City makes a policy determination, the COE will not opine as to the suitability of the policy or procedure unless a section of the code is implicated.

THE FACTS as we understand them are as follows;

The City of Boca Raton (the City) holds an annual Winter Children's Fair in December. In addition to rides and games for children, the City markets vendor booths for restaurants and businesses to sell goods and services to attendees. The City charges a reservation or rental fee for each booth. This year, the City plans to charge food-booth operators a percentage of the amount earned during the fair, while charging other operators a flat rate. Operators do not sell or lease goods or services to the City and there is no bid process, offer or request for sale in connection with these booths.

THE LEGAL BASIS for this opinion rests in the jurisdiction conveyed to the Palm Beach County Commission on Ethics through the Commission on Ethics and Code of Ethics ordinances. While the code of ethics regulates employee and official's conduct with regard to vendors, booth operators who lease

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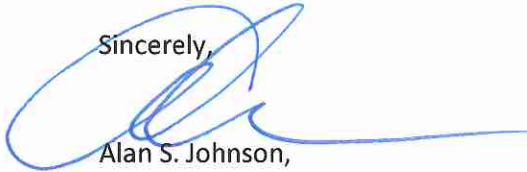
space from the City and do not provide goods or services to the City are not vendors as defined by the code of ethics.<sup>2</sup> As such, Code of Ethics subsections regulating municipal vendors<sup>3</sup> are not implicated in regard to either the booth operators' participation in the fair or City discretion to determine the method of charging booth operators for the space. Your advisory opinion request contains no facts or circumstances to indicate that the policies and procedures proposed by the City involve misuse of office for special financial gain, corrupt misuse of official position or any other regulation or prohibition contained within the Code of Ethics.

IN SUMMARY, based on the facts and circumstances you submitted, the COE cannot opine as to matters that involve City policies and procedures that are not subject to its jurisdiction.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/mr/gal

cc: Diana Grub Frieser

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<sup>2</sup> 2-442 Vendors, RQO 11-022, RQO 11-069

<sup>3</sup> E.g., Article XIII, Section 2-444 (Gift law)



# Palm Beach County Commission on Ethics

## Commissioners

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

## Executive Director

Alan S. Johnson

October 24, 2011

Henry Esformes, Family Therapist  
Palm Beach County Public Safety  
4200 North Australian Avenue  
West Palm Beach, FL 33407

Re: RQO 11-098  
Acceptance of gifts

Dear Mr. Esformes,

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 email of October 20, 2011, whether you could accept a \$15 gift card from a client of the Highridge Family Center, a division of the Palm Beach County Public Safety Department, in appreciation of the therapy you provided in the course of your public employment.

IN SUM, Section 2-444(c) of the Palm Beach County Code of Ethics specifically prohibits an employee from accepting a gift because of "an official action taken" or "duty performed". The assistance you provided was in your official capacity as a Palm Beach County employee, therefore you are prohibited from accepting the gift.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee working as a therapist at the Highridge Family Center (HFC) in the Public Safety Department. A client recently gave you a \$15 gift card for a local vendor. You attempted to give back the card explaining that you are not allowed to take any gifts, however, the client was insistent. As you described in your email, "he was quite insistent...it got to the point that I felt he would be insulted if I insisted anymore in him taking back the gift." You subsequently went to your supervisor for direction and she suggested you contact the ethics commission.

According to your submission, this situation arises regularly at HFC as clients routinely seek to show their appreciation for the work done by you and your colleagues.

THE LEGAL BASIS for this opinion relies on the following section of the Palm Beach County Code of Ethics.

Article XIII, Sec. 2-444. Gift Law.

- (c) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
- (1) An official public action taken or to be taken, or which could be taken;
  - (2) A legal duty performed or to be performed or which could be performed; or
  - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

The Code of Ethics specifically prohibits an employee from accepting a gift because of "an official act taken" or "duty performed". Regardless of whether or not the gift is a gesture of thanks from a satisfied client or one given with ulterior motive or intent, it is still a gratuity tied to your official act in doing your job of providing physical therapy to a specific HFC client. The COE has previously opined on this issue and has concluded that accepting personal "thank you" gifts for the performance of your job as a public employee is discouraged and specifically prohibited under the code.<sup>1</sup> This includes a gift of any value.

IN SUMMARY, you may not accept a \$15 gift certificate as a thank you for providing physical therapy to a client in the performance of your official duties.

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

ASJ/gal

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<sup>1</sup> RQO 10-031 (tickets to a play), RQO 11-008 (two \$25 gift certificates as appreciation for work on a discrimination case)

## VIII – CITY OF BOCA RATON ADVISORY BOARD CONFLICTS

### Staff Analysis:

Two proposed advisory opinions were submitted to the COE by staff on October 6, 2011. After discussion, the COE tabled the opinions for further discussion and public input at the next regularly scheduled meeting, November 3, 2011.

The initial staff submission recommended the following general interpretation of the voting conflicts section of the PBC Code of Ethics: Section 2-443(c) states that “county and municipal officials...shall abstain from voting *and not participate* in any matter that will result in a special financial benefit...” Therefore, a member of an advisory board must abstain and not participate further in the process, where such a conflict exists. This prohibition goes beyond what is required by state law, but allows interaction with staff on a professional level. However, any attempt by a board member to influence or coerce staff in his or her capacity as an advisory board member would violate the misuse of office section.

### State Law/County Code Analysis:

State law requires abstention of a board member “upon any measure which would inure to his or her special private gain or loss.”<sup>1</sup> However, while required to abstain, an appointed public officer may participate in a matter “...which would inure to the special private gain or loss of any principal by whom he or she is retained...” provided the nature of the conflict is disclosed orally at the meeting or in writing beforehand and filed with the clerk of the board.<sup>2</sup> State law permits local government to enact “more stringent standards of conduct” provided those standards do not otherwise conflict with the state code of ethics.<sup>3</sup>

Attorneys for the City of Boca Raton have cited to State Statutes and State COE opinions which specifically exclude licensure boards (boards established by local governing bodies requiring members to have certain state licenses) from conduct otherwise restricted or prohibited. However, the specific issue addressed by state law involves a separate section of the state code dealing with disqualification from boards because of contractual relationships or “frequently recurring conflict between his or her private interests and the performance of his or her public duties...”<sup>4</sup> Specifically, state law carves out an exception to the prohibition against recurring conflicts or “having a contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee.”<sup>5</sup> The State Commission on Ethics has interpreted this statute to allow licensed professionals to serve on a board when they would otherwise be prohibited.<sup>6</sup>

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<sup>1</sup> Sec. 112.3143(3), Florida Statutes

<sup>2</sup> Sec. 112.3143(4), Florida Statutes

<sup>3</sup> Sec. 112.326, Florida Statutes

<sup>4</sup> Sec. 112.313(7) , Florida Statutes, *Conflicting employment or contractual relationship*

<sup>5</sup> Sec. 112.313(7)(b), Florida Statutes (*This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.*)

<sup>6</sup> CEO 04-1 (January 27, 2004)

The exemptions involving licensure boards involve the ability to sit on the board, not the manner of participation. All board members under state law, not just those on licensure boards, may participate (but not vote) once they have disclosed their conflict. The PBC Code of Ethics goes farther and requires that the board member both abstain *and not participate*, which is more stringent than the state code. However, the voting conflict section of the county ethics code deals only with the voting and participation issue, not the ability to serve on the board. Therefore, there is no conflict with state law in more closely regulating licensure boards with regard to abstention *and participation* requirements for sitting members.

Staff Recommendation:

Any decision regarding the issue of professional participation with board/department staff prior to abstention should include interpretation of the specific language contained within the PBC Code of Ethics, as well as consideration of the code's intent. Members of an advisory board may not communicate with each other regarding an issue that they reasonably foresee will come before their board.<sup>7</sup> Therefore, the issue becomes whether (and when) a board member may participate by dealing with staff on behalf of a customer or client prior to the board meeting.

Staff recommends that the COE take a strict construction approach to the wording of §2-443(c) in light of the fact that current state law does not prohibit participation of board members so long as the conflict is disclosed and the member abstains from voting on the conflict issue. The intent of the legislation is to prevent an official from using his or her official position to obtain a prohibited special financial benefit. The official position is that of board member. Under this construction, a board member who happens to be a landscape architect, for example, can interact with staff as any landscape architect would. Should the landscape architect use his or her position as a board member to influence, coerce or threaten a staff member, however, this action would constitute a misuse of office under the code. When the matter comes before the board, and the member discloses and abstains, all participation must cease thereafter.

Therefore, considering the plain language of the code, the fact that the county code of ethics is more stringent than the state code, that the potential misuse of official position is addressed in the financial and corrupt misuse of office sections, and the potential for abuse of official position is lessened in regard to preliminary professional contact with government department staff personnel, COE staff recommends a strict construction of the language as contained in section 2-443(c); that upon abstention and disclosure, an advisory board member may not participate thereafter in a matter that will result in a special financial benefit to the persons and entities listed in sec. 2-443(a)(1-7).

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<sup>7</sup> Sec. 286.012, Florida Statutes (sunshine law)

October 7, 2011

Gregory Miklos  
Boca Raton Community Appearance Board  
2263 N.W. Boca Raton Boulevard, Suite 112  
Boca Raton, FL 33431

Re: RQO 11-067  
Voting Conflicts

Dear Mr. Miklos,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on October 6, 2011.

YOU ASKED as a member of the Boca Raton Community Appearance Board (CAB), whether a member of your outside business may represent a customer or client of your firm in front of the CAB, so long as you abstain from voting and do not participate in any part of the decision-making process.

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

THE FACTS as we understand them are as follows:

You are an architect who serves on the Community Appearance Board (CAB), an advisory board for the City of Boca Raton (the City). The CAB reviews all commercial and multifamily residential projects in the City and all signage (free-standing and on buildings) for aesthetics and code compliance.

Your firm, Miklos and Associates, is based in the City and you are contacted frequently by clients who wish to develop, remodel, or rezone a property they own within the City. As their architect, you meet with the City zoning staff to work out site specifics and other issues. Once the preliminary site, floor and evaluation plans are completed, you present your proposal to the Planning Advisory Board (PAB) for review and discuss the reviewer's comments from related departments such as traffic, fire, utility, zoning or environmental divisions. After these discussions, you make the required revisions to the proposal as needed and then resubmit your plans to the PAB and the City Council. Throughout this process, you will be the member of your firm representing the client. Prior to final approval, this plan

must go before the CAB. At that time you disclose the nature of your conflict- that your firm represents the client's plan subject to the Board's approval, abstain from voting and do not participate in any part of the process, including conversations with staff regarding CAB issues. Subsequent to the abstention, you file a state conflict form as required by statute. In dealing with the CAB and the department within the CAB's authority, another member of your firm presents the project.

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

Section 2-443(a) prohibits you from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *know or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public.* A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.

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

*County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public...*

In this context, "participate" means that while you may not present your clients project to the CAB or take part in any presentation or discussion regarding your client's project with your fellow CAB board members. You are not prohibited from meeting with and presenting to Zoning staff and other related city advisory boards.<sup>1</sup> However, while you may submit and discuss your client's project with staff prior to the matter coming before the CAB, you may not use your official position to influence the process. The misuse of office and voting conflict prohibitions apply to you personally, or someone using your official title or position at your direction. Therefore, you are not prohibited from working with City staff on your client's project up and until it goes before your board, so long as it is in your professional as

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<sup>1</sup> Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.



compared to your official capacity. Additionally, this provision does not prohibit other owners or employees of your outside business from representing your client's interest in these matters.

IN SUMMARY, based on the facts and circumstances presented, you may not use your appointed office to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, you must disclose the nature of that conflict, refrain from participating and file the required conflict disclosure form 8b. The Code of Ethics does not prohibit a business associate or other individual from representing your client's interests before the CAB separate and apart from you or your official office.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,  
Executive Director

ASJ/mr/gal

PROPOSED

October 7, 2011

Diana Grub Frieser, City Attorney  
City of Boca Raton  
201 West Palmetto Park Road  
Boca Raton, FL 33432

Re: RQO 11-076  
Voting Conflicts

Dear Ms. Grub Frieser,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on October 6, 2011

YOU ASKED whether advisory board members whose appointment requires professional licensure pursuant to city ordinance are subject to the abstention and non-participation requirements of the Palm Beach County Code of Ethics where an exemption exists for these members in Florida State Statutes.

IN SUM, appointed officials are prohibited from using their position as advisory board members to give themselves, their outside business, or their outside customers or clients a special financial benefit not shared with *similarly situated members of the general public*. While the Florida Code of Ethics may contain exemptions and/or additional requirements that differ from the County code, voting on a client's proposal, participating in conversations or attempting to influence advisory board members would constitute a misuse of office under the Palm Beach County Code of Ethics. The prohibition extends to the official, or someone using their official position on their behalf.

THE FACTS as we understand them are as follows:

You are the City Attorney representing the City of Boca Raton. A member of the City's Community Appearance Board (CAB) contacted the Palm Beach County Commission on Ethics (COE) and asked whether a member of his outside business may represent a customer or client of his architectural firm in front of the CAB so long as he abstained from voting and did not participate in any aspect of the decision-making process.<sup>1</sup> In response to this request, the City provided additional information about the CAB Board, state statutes and Florida Commission on Ethics interpretation of state law. You requested an advisory opinion based on this information.

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<sup>1</sup> Proposed RQO 11-067 (when presented with a voting conflict, an official must abstain and not "participate" by discussing, presenting or personally attempting to influence members of their board. Advisory board members are not prohibited from meeting with and working with staff in their professional capacity prior to the matter coming before their board so long as they do not use their official position to influence staff decisions)

Pursuant to city ordinance, all CAB board members, except one, must be state-registered architects, state-registered landscape architects, state-registered professional engineers, planners, building contractors, or real estate salespersons or brokers. Under fact-specific scenarios, the Florida COE has opined that where a local ordinance requires an advisory board member to possess a registration or other professional credential, §112.313(7)(b), Florida Statutes, operates to waive an existing conflict of interest, similar to the conflict presented in proposed RQO 11-067.<sup>2</sup> That opinion is based upon the Florida Code of Ethics. The City suggests that because there is no express prohibition in the county code that mirrors the language of §112.313(7)(a), Florida Statutes, that state law controls and the exception created by §112.313(7)(b) would authorize a board member, who is appointed based upon professional licensure, to appear before and represent a client before his or her own board.

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

The Florida Code authorizes governmental entities to adopt more stringent ethics standards under §112.326, Florida Statutes.<sup>3</sup> Section 2-443(a) of the Palm Beach County Code of Ethics prohibits any advisory board member, elected official or employee from using their official position to give themselves, their outside business, or a customer or client of their outside business a special financial benefit not shared with similarly situated members of the general public. In tandem with the misuse of office provision, §2-443(c) prohibits county and municipal officials from voting on, or participating in, any matter that would result in a special financial benefit attributable to themselves or one of seven prohibited entities outlined in §2-443 (a). These prohibitions are more stringent than state requirements as they encompass *all* conflict of interest provisions outlined in the state code of ethics.

Accordingly, advisory board members, regardless of licensure qualifications provided by City ordinance, must 1) disclose the nature of their conflict before their board discusses the issue; 2) abstain when the vote takes place *and not participate* in the matter; and 3) File a state voting conflict form (8B) submitting a copy to the clerk and the Palm Beach County COE.

The language of §2-443(c) is as follows:

*County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public...*

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<sup>2</sup>CEO 04-1 (Section 112.313(7)b operates to negate conflicts grounded in §112.313(7)a where an ordinance recognizes that professional credentials are so vital to the expertise and operation of a public board that while a prohibited conflict of interest exists, that interest must yield to the public purpose of a portion of the board's membership possessing professional training).

<sup>3</sup> FLA. STAT. §112.326, *Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part. PBC Code §2-441, the purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326.*

In this context, “participate” means that an advisory board member may not present their own project, their employers project or as in the case presented in proposed RQO 11-067, a clients project, to their board, or take part in any presentation or discussion regarding that project before fellow board members. Advisory board members are not prohibited from meeting with and presenting materials to staff regarding a project provided such contact is in their professional capacity.<sup>4</sup> However, while advisory board members may submit and discuss their project with staff prior to the matter coming before their board, they may not use their official position to influence the process. To be clear, advisory board members are not prohibited from working with City staff in their professional capacity up and until the matter goes before their board, so long as it remains in their professional as compared to their official capacity as a board member. This provision does not prohibit other owners or employees of a board member’s outside business or employer from representing a client’s interest or a business’s interest in these matters, so long as it is not done on behalf of the abstaining board member.

IN SUMMARY, state law permits local government to adopt more stringent standards of conduct than those specified in the Florida Code of Ethics provided those standards do not otherwise conflict with the state code. The Palm Beach County Code of Ethics does not ban the establishment of licensure requirements for local advisory boards, however, in certain instances it does more tightly regulate potential financial misuse of the office. Based on the facts and circumstances presented, advisory board members, regardless of any professional licensure requirements associated with their appointment, may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit. When faced with a conflict, they must disclose, abstain, not participate and file the required conflict disclosure form 8b. The Code of Ethics does not prohibit a business associate or other individual from representing a client’s interests before the official’s board.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable *to any conflict* under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,  
Executive Director

ASJ/mr/gal

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<sup>4</sup> Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.

## **IX – SYNOPSIS – PROPOSED ADVISORY OPINIONS**

### **RQO 11-089 Bonnie Jensen**

An attorney for a municipal pension plan asked whether plan Trustees must report salary, benefits, services, fees, commissions, gifts or expenses associated with the Trustee's outside employment, business or service as an officer or director of a corporation or organization, where an exception exists for such items in state law.

Staff submits the following for COE approval: the term "gift" as defined by the Code of Ethics refers to the transfer of anything of economic value without adequate and lawful consideration if not specifically exempted under the gift law. Therefore, any salary, service, benefit, fee, commission, or expense received as adequate and lawful consideration for a Trustee's outside employment would not be defined as a "gift" and would not be reportable under the gift law reporting requirements. However, any "gifts" that do not constitute compensation, received by a Trustee from any person or entity not specifically exempted by the gift law, would be reportable.

### **RQO 11-090 Walter Fleming**

A municipal public works director asked whether a prohibited conflict of interest was created if his spouse submitted a sealed bid for and was awarded a contract to provide lawn and landscape services to his governmental employer. The underlying contract is supervised by the Town Manager and the employee is not involved in the bid specifications or oversight of the contract.

Staff submits the following for COE approval: a municipal employee may not use their public position to give a special financial benefit to their spouse's outside business. While the code of ethics prohibits employees and officials from contracting with the government they serve, spouses and relatives are not prohibited from contracting with their spouse's public employer, provided that the employee or official is not an owner, principal or employee of the spouse's business and does not use their official position to benefit that business.

### **RQO 11-091 Jacquelyn Anderson**

A county employee asked whether the code of ethics prohibits public employees from using their public email to solicit donations and gifts on behalf of their church from other public employees. The employee is a member of the church, but is not an officer or director.

Staff submits the following for COE approval: public employees are not prohibited by the code of ethics from soliciting donations from coworkers for a non-profit organization, unless they are an officer or director of the non-profit, or corruptly use their official position to give a benefit to another person in exchange for a donation. The COE cannot opine as to county policy or procedure regarding the use of county resources in this manner.

**RQO 11-092 Jeffrey Kurtz**

A Village Attorney asked whether a Village councilmember whose outside business provides engineering services to Palm Beach County may vote on inter-local agreements between the municipality she represents and her government client.

Staff submits the following for COE approval: municipal officials whose outside business or employer contracts with county government are not prohibited from voting on contracts between their government-client and the government they serve, provided that the inter-local agreement is unrelated to their business relationship with the government-client or does not otherwise give their outside business a special financial benefit. Voting on inter-local agreements that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

**RQO 11-093 Kyle Grandusky**

An employee of a county vendor appointed to a county technical/professional working group by the League of Cities asked whether he may continue to serve as a member of the working group. The working group (WG) reports to the Water Resources Task Force (WRTF). While the resolution that created the WRTF specifies the membership of the WG, it does not call for the creation of the WG. The WG may only be convened at the request of the Chair of the WRTF for the purpose of answering a technical question requiring professional expertise. The WG cannot be convened by the BCC or any municipal governing body.

Staff submits the following for COE approval: The Commission on Ethics (COE) jurisdiction is limited to municipal and county employees, officials, and advisory board members. Here, while the technical/professional working group reports to a County advisory board, it is not an advisory board created by the county or a municipality. Moreover, as an appointee of the league of cities and not the Board of County Commissioners or municipality within the county, the WG member is not an official as defined by the code of ethics. Accordingly, he is neither an official, nor an advisory board member and is not subject to the provisions of the code.

**RQO 11-094 Jennifer Ray**

A municipal employee asked whether her family may participate in fundraising efforts on behalf of "Project Graduation", an all-night drug and alcohol free celebration for high school seniors. In past years, volunteers have signed onto a letter to local businesses soliciting funds. Several of the donors are vendors of the municipality that she, her husband and son serve.

Staff submits the following for COE approval:

- Public officials or employees who have a dependent child eligible to receive a financial benefit may not use their official public position or title, directly or indirectly, to specially financially benefit their child.

- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for *their own personal benefit, the benefit of their relatives or household members or the benefit of another employee.*

Public employees are not prohibited, in their personal capacity, from soliciting or accepting donations for the benefit of their children, from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the City, as long as there is no quid pro quo or other benefit given for an official act or performance of a public duty, and so long as they do not use their official position or title if they or their children are eligible for a special financial benefit.

#### **RQO 11-096 Cale Curtis**

A municipal finance director asked whether the current town attorney who resigned his position effective December 31, 2011 may meet for lunch with Town employees or officials to discuss the RFQ process to select his replacement where the current contract is with the attorney's law firm and not specifically with the attorney himself.

Staff submits the following for COE approval: an employee may not use his or her official position to obtain a financial benefit not shared by similarly situated members of the general public, for himself or his outside business or employer. A contract for services or a renewal of a service contract is of financial benefit to an applicant. Therefore, a contract employee of the Town with a pending application before the Town may not discuss the application with officials or employees unless all other applicants are given the same opportunity, in the same manner as the employee. This extends to an application submitted by the employee's outside business or employer.

#### **RQO 11-097 James Walley**

A municipal police officer asked whether he was required to report a gift of discounted tickets to a charity function, valued in excess of \$100 when the tickets were provided to him by a fellow police officer and if so, whether the gift reporting requirement applies to all non-exempt gifts given during the fiscal year, but prior to the effective date of the Code of Ethics.

Staff submits the following for COE approval: a municipal employee is not required to report a gift motivated by a personal friendship or social relationship provided the gift is not given by a vendor, lobbyist, principal or employer of a lobbyist who sells, leases, or lobbies their municipality. The requirement to report gifts is procedural and all municipal officials and employees, not required to report under state law, must complete and submit an annual gift disclosure report with the COE no later than November 1, 2011 for the preceding year ending September 30, 2011. Substantive violations of the gift law involving municipal employees or officials occurring prior to June 1, 2011, cannot be prosecuted under the code, however, unless exempted; all gifts with a value in excess of \$100 received during this period must be reported.

November 4, 2011

Bonni S. Jensen, Esquire  
Perry & Jensen, LLC  
400 Executive Center Drive, Suite 207  
West Palm Beach, FL 33401-2922

Re: RQO 11-089  
Gift Law

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on November 3, 2011.

YOU ASKED in your letter dated September 22, 2011, whether Trustees of the Firefighter Board of Trustees, Town of Palm Beach Retirement System (FBT), who are subject to the Palm Beach County Commission on Ethics, must report “salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the [Trustees] employment, business or service as an officer or director of a corporation or organization?” You also asked if a Trustee nominated or selected by the other four (4) Trustees to this retirement board, but ultimately appointed by the governing body of the Town, is subject to the jurisdiction of the Palm Beach County Commission on Ethics.

IN SUM, the term “gift” as defined in the Code of Ethics refers to the transfer of anything of economic value without adequate and lawful consideration if not specifically exempted under the gift law. Therefore any salary, service, benefit, fee, commission, or expense received as adequate and lawful consideration for a Trustee’s outside employment, business or service rendered would not be defined as a “gift,” and would not be reportable under the gift law reporting requirements. However, any “gifts” that do not constitute compensation by an outside business or employer, received by a Trustee from any person or entity not specifically exempted within the gift law, would be reportable where the Trustee is subject to the Code of Ethics.

Trustees appointed by the governing body are considered “officials” and subject to the code. The fact that one appointment is based on a selection by the existing Trustees does not negate the fact that the ultimate appointment is by the governing body and the appointee is subject to the Code of Ethics.<sup>1</sup>

THE FACTS as we understand them are as follows:

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<sup>1</sup> RQO 11-035, RQO 11-060



You are legal counsel for the Firefighters Board of Trustees (FBT), within the Town of Palm Beach Retirement System (RS). The RS was created by a Palm Beach Ordinance in accordance with Chapter 112, Florida Statutes. The FBT's authority was created pursuant to Chapter 175, Florida Statutes, and is contained within Section 82-86 of the Town Code. The FBT is comprised of five (5) members. Two (2) are chosen and appointed by the Town Council. Two (2) are employees of the Town and are elected by the members in the retirement fund. The fifth member is chosen by the other four Trustees, but is actually appointed by the Town Council, in what you refer to in your letter as, "a ministerial duty by the Town." The Town of Palm Beach (the Town) is ultimately responsible for funding the System. You also advise that it is the Town that actually appoints this fifth trustee to the Board.

In the second portion of your letter, entitled, "Gift Reporting Discussion," you point out that under Chapter 112 Florida Statutes, the state requirements for gift reporting vary somewhat from the PBC Code of Ethics. You correctly indicate that under state law a "Gift" does not include; "Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization"<sup>2</sup> Further, you acknowledge that this language is not repeated in Section 2-444(g)(1)(a-h), where the Code of Ethics lists gift "exceptions."

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

Section 2-442, *Definitions*, of the PBC Code of Ethics defines "Official" as a member appointed by the local municipal governing body to serve on any advisory, quasi-judicial or *any other board of the county, state, or any other regional, local, municipal, or corporate entity*. The Code does not make a distinction as to whether the governing body is making such an appointment in any particular manner. The fact that one Trustee on the FBT is initially chosen as a candidate by the other four Trustees is immaterial to the manner in which that person formally becomes a Trustee on the Board when appointed by a vote of the governing body. The governing body, in particular one that is, "responsible to fund the benefits of the Plan," under state law<sup>3</sup>, can choose not to appoint a particular individual and require that another candidate be selected. Again, the relevant fact is that while the initial choice of a potential candidate is made by the other Trustees, the appointment itself is made by the governing body.

Section 2-444(g), defines "gift" for reporting purposes under the PBC code. It states that a gift "shall refer to the transfer of anything of economic value...without adequate and lawful consideration." The definition does exclude the majority of items listed in §112.312(12)(b), Florida Statutes, where there is *adequate and lawful consideration* given in exchange for the thing of value. However, unlike the state statute, the PBC Code of Ethics does not specifically exclude items transferred without adequate and lawful consideration, regardless of whether they are associated with a recipient's employment, business, or service as an officer or director of a corporation or organization. Therefore, under the Code of Ethics, such items are reportable as gifts, as indicated below.

Section 2-444(f) states that any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section. While the general obligation, manner and

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<sup>2</sup> F.S.S. 112.312(12)(b), Florida Statutes

<sup>3</sup> Pursuant to Sections 112.66 and 175.091, Florida Statutes (2011)

method in which some gifts are reported may be governed by state law (i.e., use of a State of Florida Form 9 as opposed to a PBC Gift Form), and state statute and administrative code are used for valuation purposes<sup>4</sup>, the definition of *what constitutes a gift* for county and municipal employees and officials in Palm Beach County is governed by the PBC Code of Ethics.

IN SUMMARY, under the *Gift law* provisions of the Palm Beach County Code of Ethics, when an official accepts the transfer of anything of economic value without adequate and lawful consideration, they have accepted a gift. When the value of such a gift exceeds one hundred dollars (\$100), they are required to report this gift as required by the Code of Ethics, unless otherwise excluded by the code.

Regardless of who selects a candidate for appointment as an FBT Trustee, the appointment is made by the governing body, in this case the Town Council. All Trustees appointed by the Town Council are “officials” and subject to the gift reporting requirements of the PBC Code of Ethics. FBT Trustees who are employees, elected to the FBT by members of the retirement fund, are subject to the code as employees, not officials.

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/meb/gal

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<sup>4</sup> §2-444(g), §112.3148(7), Florida Statutes, §34-13, Florida Administrative Code

November 4, 2011

Mr. Walter Fleming, Public Works Director  
Town of Palm Beach Shores  
330 Linda Lane  
Palm Beach Shores, FL 33404

Re: RQO 11-090  
Contractual Relationships/Misuse of Office

Dear Mr. Fleming,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on November 3, 2011.

YOU ASKED in your letter dated September 22, 2011, whether a prohibited conflict of interest is created if your spouse bids for and is awarded a contract to provide lawn and landscape services to the Town of Palm Beach Shores (the Town) for which you serve as Public Works Director.

IN SUM, based on the facts you have submitted, you may not use your public position to give a special financial benefit to your spouse's outside business. While the code of ethics prohibits employees or officials from maintaining a contract with the government they serve, your wife is not prohibited from contracting with the Town, so long as you are not an owner, principal or employee and do not use your official position to benefit her business.

THE FACTS you submitted are as follows.

You are the Public Works Director for the Town of Palm Beach Shores (the Town). Your wife's business, S&W Professional Services, has provided lawn maintenance service to the Town since 2005. S&W's contract expired on September 30, 2011. The Town advertised an invitation to bid for Lawn and Landscape Maintenance Services with a formal submission deadline of Tuesday, September 27, 2011 for sealed bids. The underlying contract is under the supervision of the Town manager; you were not involved in preparing the bid specifications nor would you provide oversight, management, enforcement or otherwise be involved with the contract or her services.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County 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 special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;
- (2) His or her spouse or domestic partner...;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

(d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, *or the official or employee's outside employer or business.* (emphasis added)

Sec. 2-443(d) prohibits you or your outside employer or business from entering into contracts or other transactions for goods or services with the Town, unless one of several exceptions apply. Sec. 2-443(d) does not prohibit your spouse or her outside business from bidding for and contracting with your employer. However, please keep in mind that §2-443(a), *misuse of office*, prohibits you from using your office or influencing other employees and officials to take or fail to take any action that would give your spouse a special financial benefit.<sup>1</sup>

IN SUMMARY, based on the information you have provided, you may not use your official position to give or influence others to give your spouse's business a special financial benefit. That being said, your spouse is not prohibited from bidding for or maintaining contracts with the Town, so long as you are not an owner or principal in her business.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,  
Executive Director

ASJ/mr/gal

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<sup>1</sup> RQO 11-037 (where a private resident inspector is a sibling of the town building inspector, the best practice would be to assign oversight responsibility to another town employee or official)

November 4, 2011

Jacquelyn Anderson  
Palm Beach County ISS-Quality Assurance  
301 N. Olive Avenue  
West Palm Beach, FL

Re: RQO 11-091  
Charitable Solicitations

Dear Ms. Anderson,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on November 3, 2011.

YOU ASKED, on September 30, 2011 whether county employees may use their public email to solicit donations and gifts on behalf of a non-profit from other county employees.

IN SUM, you are not prohibited by the Code of Ethics from soliciting donations from other county employees on behalf of the Central New Testament Church of God (the Church) unless you are an officer or director of the Church or you corruptly use your official position to give a benefit to another person in exchange for a donation. The COE cannot opine as to county policy or procedure regarding use of county resources in this manner.

THE FACTS as we understand them are as follows:

You are a county employee in the information systems services department (ISS).

Your church runs a program called "the Homeless Project" (the Project). The Project collects food and other donated items to distribute to the homeless in Palm Beach County around the Thanksgiving holidays. You emailed county employees, informed them of the program's mission and asked them to contribute from a list of items including toothbrushes/toothpaste, mouthwash, deodorant, shampoo/conditioner and other toiletries. You are a member of the Church but do not serve as an officer or director. You have not and do not plan to solicit donations from vendors or lobbyists of the County in association with this event. Thus far, you have received several cash donations in addition to toiletry items. In your request, you noted that you have logged all cash donations and submitted this record to the Project director.

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

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting more than \$100 from a *vendor or lobbyist* who sells, leases or lobbies their government employer. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable fundraising.<sup>1</sup> This exception requires that fundraisers maintain a log of all solicitations and donations in excess of \$100 from *vendors or lobbyists* doing business with or lobbying their public employer. Furthermore, in soliciting donations from these persons or entities, a public employee *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions from vendors or lobbyists.*<sup>2</sup> However, so long as you do not solicit from *vendors or lobbyists* of the county, the code of ethics does not prohibit you from using your email to solicit donations from your co-workers, nor are you required to keep a log of the donations made.

However, no solicitation or donation can be made or accepted in exchange for an official act or duty performed. You may not corruptly misuse your office by offering a benefit as a quid pro quo for a donation that is inconsistent with the proper performance of your duties as a county employee.<sup>3</sup>

The County may have policies and procedures that address this issue. While the Commission on Ethics will address questions concerning the Code of Ethics, responsibility for interpretation and enforcement of county policies or procedures remains with your supervisor or department head.

IN SUMMARY, based upon the facts you have provided, the Code of Ethics does not prohibit you from using the county email system to solicit donations from other county employees on behalf of your Church's homeless project fundraising effort, so long as you are not an officer or director of the Church, or the Project, and do not use your official position to corruptly benefit a donor in exchange for a donation.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,  
Executive Director

ASJ/mr/gal

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<sup>1</sup> §2-444(h), PBC Code of Ethics

<sup>2</sup> §2-444(h)(3), PBC Code of Ethics

<sup>3</sup> §2-443(b) corrupt misuse of office, PBC Code of Ethics

November 4, 2011

Mr. Jeffrey Kurtz, Esq.  
Northpoint Corporate Center  
701 Northpoint Parkway, Suite 209  
West Palm Beach, Florida 33407

Re: RQO 11-092  
Voting Conflicts

Dear Mr. Kurtz,

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED in your letter of September 30, 2011 whether a municipal councilperson whose outside business provides engineering services to Palm Beach County may vote on inter-local agreements between the municipality she serves and her government customer or client.

IN SUM, Officials whose outside business or employer contracts with other governments are not prohibited from voting on contracts between their government-client and the government they serve, provided that the inter-local agreement is unrelated to their business relationship with the government-client. However, voting on issues that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

When presented with a situation that would benefit themselves, or their outside employer or business, an official must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of Wellington (The Village). Wellington Councilperson Anne Gerwig is married to Alan Gerwig who is a principal in the engineering firm of Alan Gerwig and Associates, Inc. (The firm). Councilperson Gerwig is an employee and has an ownership interest in the firm. The firm has contracts to provide engineering services to Palm Beach County and acts as a sub-consultant on projects for the County as well. Over the past 24 months, the firm has been paid more than \$10,000 for engineering services and as a sub-consultant on projects for Palm Beach County.

The Village enters into interlocal agreements with the Palm Beach County including specific county agencies on a reoccurring basis. For example, the County provides supplemental payments to the Buck Program for children to receive swimming lessons from Village personnel at the Village pool. This

agreement between the Village and the County has no direct or indirect connection with the services provided to the County by the Firm.

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

Section-2-443 prohibits officials and employees from using their official position to give themselves, their outside business, or a customer or client of their outside business a financial benefit, in a manner which they *know or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public*. While §2-442 exempts governmental entities from the definition of outside employer or business, no such exemption exists within the definition of customer or client. A customer or client is defined as a person or entity to which an employee or official's outside business has supplied goods or services in excess of \$10,000 over the previous 24 months. As such, Palm Beach County would constitute a customer or client of the firm.

Section 2-443(c) similarly prohibits officials from voting on an issue or participating in a manner that would result in a special financial benefit attributable to themselves, their outside business or a customer or client as previously described. Essentially, the voting conflict section addresses the scenario whereby an official would violate the misuse of office prohibitions of the code by voting. In such a scenario officials are required to 1) disclose the nature of their conflict before the Council discusses the issue; 2) abstain from any discussion or vote and not participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the board, council or commission clerk and the Palm Beach County COE.<sup>1</sup>

The plain language of the code requires abstention when a vote would result in a *special financial benefit*. The issue of a special financial benefit turns on whether that financial benefit is shared with similarly situated members of the general public. While Palm Beach County is a customer or client of Councilperson Gerwig, voting on matters unrelated to her outside business but benefiting the County would not result in a special financial benefit to her public customer or client, as a government entity represents all residents within its political boundaries.

Since any benefit or loss obtained by the County would apply to all residents of the County, the financial benefit, should one exist, rests universally with all residents of Palm Beach County. A prohibited financial benefit would result only if there are circumstances unique to Councilperson Gerwig which would enable Councilperson Gerwig, her husband or his or her outside business or employer to gain more than other county residents.

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<sup>1</sup> §2-443(c)



Accordingly, should a matter come before the Village Council that would benefit Councilperson Gerwig, her husband or his or her outside business or employer, she must abstain from voting and not participate, even if the matter involves a contract with the County.

IN SUMMARY, Based on the facts you have submitted, you are not prohibited from voting on inter-local agreements involving the Village and Palm Beach County, notwithstanding the fact that Palm Beach County is a customer or client of the engineering firm of Alan Gerwig and Associates, Inc., provided that the inter-local agreement does not give you, your husband, or the Firm, a special financial benefit.

When presented with a situation that would result in a special financial benefit for you, your outside business or employer, or the business or employer of your spouse, you must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.<sup>2</sup>

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

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<sup>2</sup> Sec. 2-442 definitions excludes a government entity from the definition of *outside employer*. Where an official's outside employer is another government entity sec. 2-443(4) does not apply. RQO 10-026, 11-036 OE, 11-045

November 4, 2011

Mr. Kyle D. Grandusky  
1201 Belvedere Road  
West Palm Beach, FL 33405

Re: RQO 11-093  
Contractual relationships/officials/advisory board

Dear Mr. Grandusky,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on November 3, 2011. The opinion rendered is as follows:

YOU ASKED in your letter dated October 3, 2011 whether as an employee of Engenuity Group, Inc., a county vendor, you may continue to serve as a member of the Technical/Professional Working Group of the Palm Beach County Water Resources Task Force.

IN SUM, The Commission on Ethics (COE) jurisdiction is limited to municipal and county employees, officials and advisory board members. Here, while the Technical/professional working group reports to a County advisory board it is not an advisory board created by the county or a municipality. Furthermore, as an appointee of the League of Cities, you are not an official as defined by the Palm Beach County Code of Ethics.<sup>1</sup> Accordingly, you are neither an official, nor an advisory board member and are not subject to the prohibitions of the code of ethics.

THE FACTS as we understand them are as follows

You are a professional engineer appointed by the Palm Beach County League of Cities to serve as a member of the Technical/Professional Working Group (WG) of the Palm Beach County Water Resources Task Force (WRTF). The WRTF was established by the Palm Beach County Board of County Commissioners (BCC) to identify and evaluate opportunities and impediments to providing future water supply, conservation, wastewater treatment, and reuse or reclaimed water opportunities that are most efficient and cost effective. The resolution that created the WRTF details the membership of the WG, but members of the WG are not appointed by, nor is the actual group established by, the BCC.<sup>2</sup> Members of the WG are appointed by the WRTF based upon their technical and professional expertise. The WG meets occasionally, historically two times per year, and are convened when the WRTF requests the WG to research a limited matter requiring technical expertise. The WG is authorized to opine and

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<sup>1</sup> Article XIII, sec. 2-442 definitions

<sup>2</sup>R2009-0237

investigate only those technical or planning questions asked by the WRTF. It cannot be convened by the Board of County Commissioners or any municipal governing body. It does not review contracts or bids.

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

Section 2-442, defines an advisory board as “any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.” The authorizing resolution for the WRTF details the membership requirements of the WG. However, the board is not created until called upon by the Chair of the WRTF to address a technical or professional question. Therefore, while the resolution refers to the composition of the WG, it does not call for the creation of the board. Until an issue is presented to the WRTF requiring specialized information, no meetings are scheduled. Under these particular circumstances, the WG is not an advisory board as defined by the Code of Ethics.

Similarly, §2-242 defines an official as “...members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.” While the WG is a purely advisory local board, members are appointed by various organizations, not necessarily a covered governmental entity. As a result, you are neither an official nor an advisory board member as defined by the code of ethics. That being said, you are an employee of a county vendor and while there are sections of the code that expand the COE jurisdiction to vendors (gift law, noninterference, contingency fees, honesty in applications, etc.) none of those sections include the regulated contractual relationships section of the code.<sup>3</sup>

IN SUMMARY, while the Technical/professional working group reports to a County advisory board it is not an advisory board created by the county or a municipality. Since you are appointed by the League of Cities, you are not an official as defined by the Palm Beach County Code of Ethics. The COE cannot opine as to matters that involve individuals and transactions that do not come within its jurisdiction.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,  
Executive Director

ASJ/mr/gal

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<sup>3</sup> Article XIII, sec. 2-443(d)

November 4, 2011

Jennifer Ray, Fiscal Coordinator  
City of Palm Beach Gardens  
10500 North Military Trail  
Palm Beach Gardens, FL 33410

Re: RQO 11-094  
Conflict of Interest/Misuse of Office/Gift Law

Dear Ms. Ray,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED in your submission dated October 7, 2011 whether, as municipal employees, you and your husband may participate in fundraising efforts on behalf of Project Graduation for Palm Beach Gardens High School where your son plans to attend the event.

IN SUM, the Code of Ethics prohibits public employees from participating in fundraising in the following circumstances:

- Public officials or employees who have a dependent child eligible to receive a financial benefit may not use their official public position or title, directly or indirectly, to specially financially benefit their children.
- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee.

Public employees are not prohibited, in their personal capacity, from soliciting or accepting donations for the benefit of their children, from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the City, as long as there is no quid pro quo or other benefit given for an official act or performance of a public duty, and so long as they do not use their official position or title if they are eligible for, or their children are eligible for a special financial benefit.<sup>1</sup>

THE FACTS as we understand them are as follows:

You and your husband are employees for the City of Palm Beach Gardens and have volunteered to work with other parents for your son's Project Graduation for Palm Beach Gardens High School. Project Graduation is an all-night,

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<sup>1</sup> RQO 11-056, RQO 11-081 (charitable fundraising involving scholarships to children of public employees)

drug and alcohol free celebration for graduating seniors. Historically, the committee has solicited from businesses across Palm Beach County through sponsorship letters. Several of the businesses solicited are vendors of Palm Beach Gardens. All funds are paid directly into the Project Graduation 2012 account.

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

Misuse of Office and Charitable Solicitations

Section 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 *special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:

(3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

No employee or official may use their official position or employment to obtain a special financial benefit for their children.<sup>2</sup> As a City employee whose son plans to attend the Project Graduation Event, lending your name *and official title* to fundraise for the event would constitute using your position *per se* to specially financially benefit your son resulting in a violation of the misuse of office section of the code.<sup>3</sup>

Additional Gift Law Requirements

Section 2-444(c) states as follows:

*No... employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.* (emphasis added)

While the Code of Ethics ordinarily would allow public employees to solicit or accept donations on behalf of a charitable organization provided that the donations are recorded and filed with the COE<sup>4</sup>, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit the public employee, his or her relatives or household members or any other official or employee of their government. In this case, the Project Graduation solicitation would benefit your son who also happens to be a city employee. Accordingly, you may not knowingly solicit anything of value from a vendor or lobbyist of the Town, nor can the solicitation be made by some other person or entity on your behalf. However, you are not prohibited from soliciting or accepting donations for the program from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the City, as long as there is no *quid pro quo* for an official action and the solicitation is not in your official capacity.

IN SUMMARY, based on the information that you have provided, your son is not prohibited from attending the Project Graduation events and you are not prohibited from soliciting in your private capacity on behalf of Project

<sup>2</sup> RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

<sup>3</sup> RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form financial benefit from a non-profit they may not use their official title to specially financially benefit that charity)

<sup>4</sup> §2-444(h)(2)

Graduation, so long as you solicit donations from persons or entities who are not vendors, lobbyists, principals or employers of lobbyists of the City. No employee may solicit or accept donations as a quid pro quo for an official action, or in exchange for the performance of their official duty. Finally, you may not solicit donations from anyone, using your official position or title, for the benefit of your son. To do so would constitute a violation of the misuse of office provision 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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,  
Executive Director

ASJ/mr/gal

PROPOSED

November 4, 2011

Cale Curtis, Acting Finance Director  
Town of Highland Beach  
3614 South Ocean Blvd.  
Highland Beach, FL 33487

Re: RQO 11-096  
Request for Quote Process/Misuse of Office

Dear Mr. Curtis,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED in your email dated October 17, 2011, whether the current Attorney for the Town of Highland Beach (the Town) who has resigned his position as of December 31, 2011, may meet for lunch with Town employees or officials to discuss the RFQ process to select his replacement where the current contract is with the attorney's law firm and not specifically with the attorney himself.

IN SUM, an employee may not use his or her official position to obtain a financial benefit not shared by similarly situated members of the general public for himself or his outside business or employer. A contract for services or a renewal of a service contract is of financial benefit to an applicant. Therefore, a contract employee of the Town, with a pending application before the Town, may not discuss the application with officials or employees unless all other applicants are given the same opportunity in the same manner as the employee. This extends to an application submitted by the employee's outside business or employer.

THE FACTS as we understand them are as follows:

You are the acting Finance Director for the Town of Highland Beach (the Town). The Town intends to advertise an RFQ for the position of Town Attorney. The Current Town Attorney, through his law firm, has an active annual contract with the Town. The contract extends year to year unless a party gives written notice of termination prior to the annual expiration. In addition, either party may terminate the agreement at any time upon 30 days notice provided to the other party. The contract is with the attorney's law firm, not with the individual attorney. The current attorney has resigned his position effective December 31, 2011. Specifically, you had concerns regarding "the current attorney and a staff member/commissioner going to lunch together and discussing the RFQ process with regard to the attorney's participation."

Applicants for the position will be required to go through an interview process with Town staff and elected officials, however, these are official proceedings and do not encompass private meetings such as a business lunch. Private meetings with staff or commissioners will not be offered to the RFQ applicants.

When you first submitted this request, it was unknown whether the current Town Attorney would apply. Although the current attorney has since submitted his resignation, the RFQ process will allow his law firm to apply for the position as advertised. At this time, you do not know who will be applying for this position. Under these circumstances, you wish to proceed with your request for an advisory opinion.

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

Palm Beach County Code of Ethics sec. 2-443(a) prohibits an official or employee from using his or her official position to obtain a special financial benefit, *not shared with similarly situated members of the general public*, for him or herself, or his or her outside business or employer. Section 2-443(b) prohibits an employee from using an official position to *corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others*. The term "employee" includes contract employees performing a government function.<sup>1</sup> An attorney who contracts with a municipality to provide ongoing legal services as a Town Attorney is a contract employee within the meaning of the code.

A contract employee may not use his or her official position to specially benefit himself, herself or their outside business or employer. Based on the facts you have submitted, other applicants will not have the ability to meet socially, one on one, to discuss the RFQ proposal. In addition, the current Town Attorney has an added advantage of having an existing relationship with the decision making parties and has provided ongoing services giving advice to Town employees and officials. These services, by their very nature, would give added weight to such advice or opinion. Until such time as the applicants are identified, it is unknown whether the Town Attorney's law firm will respond to the RFQ. Based upon the facts you submitted, the contract is with the attorney's law firm, not with the individual attorney. Therefore, the resignation of the Town Attorney will not affect the ability of the firm to reapply.

If the Attorney, his outside business or employer, or any other person or entity enumerated in the misuse of office section, are not seeking to contract with the Town, the issue of special financial benefit is moot and the Town Attorney is not prohibited from meeting with employees or officials in the matter.

IN SUMMARY, an official or employee may not use his or her official position to obtain a financial benefit, not shared by similarly situated members of the general public, for himself or his outside business or employer. Therefore, a Town Attorney may not participate in an RFQ process for a new Town Attorney contract if he or his outside business or employer is seeking the contract, or will otherwise specially financially benefit through the process.

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

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<sup>1</sup> Article XIII, section 2-442 definitions



November 4, 2011

Officer James Walley  
Palm Beach Police Department  
345 South County Road  
Palm Beach, FL 33480

Re: RQO 11-097  
Gift Law/Disclosure

Dear Mr. Walley,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED in your email dated October 17, 2011, whether you were required to report a gift of discounted tickets to the Town of Palm Beach (the Town) Policeman's Ball, valued in excess of \$100, when the gift was motivated by your personal or social relationship to the donor rather than an attempt to obtain your goodwill or otherwise influence you in the performance of your official duties. You also asked whether the gift reporting requirement of the revised Code of Ethics, effective June 1, 2011, applied to all non-exempt gifts given during the fiscal year ending on September 30, 2011.

IN SUM, you are not required to report a gift motivated by a personal friendship or social relationship, provided the gift is not given by a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the Town, and is not otherwise given to influence the performance of your official duties. The requirement to report gifts is procedural and all municipal officials and employees, not required to report under state law, must complete and submit an annual gift disclosure report with the Palm Beach County Commission on Ethics (COE) no later than November 1, 2011, for the preceding year ending September 30, 2011. Substantive violations of the gift law involving municipal employees or officials occurring prior to June 1, 2011, cannot be prosecuted under the code, however, unless exempted, all gifts with a value in excess of \$100 received during the reporting period must be reported.

THE FACTS as we understand them are as follows:

You are a police officer with the Town of Palm Beach. In January, 2011, you attended the annual Policeman's Ball held at Mara Lago, Palm Beach. The publicly advertised ticket price was \$500. However, officers purchased tickets through the Police Chief's secretary at the discounted price of \$25 per person. The \$475 difference was paid by the Palm Beach Police Foundation (PBPF) in an attempt to make the event affordable to police officers. Many officers purchased tickets in this manner. The Town Police Department required officers who attended the event to fill out a disclosure form for the Town.

You did not purchase tickets to the event from PBPF through the Chief's secretary. On the day of the event, you were notified by another officer who had previously purchased tickets that he was unable to attend. The officer is a personal and social friend of yours and gave you his tickets. The tickets were not given to influence you in the performance of your official duties.

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

Section 2-444(f)(2)b. requires that gifts in excess of \$100, which are not otherwise excluded or prohibited pursuant to this subsection, *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 30 of each year.* However, §2-444(2)a. states as follows:

*Personal Gifts.* All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100 in accordance with subsections (a)(1) and (b)(1).

Based upon the facts you provided, the gift was given by the individual officer who could not attend the event. It was neither a pass-through from the chief's secretary nor a gift given directly by the PBPF. As such, provided your relationship with the donor officer and the facts and circumstances surrounding the gift demonstrate that the motivation for the gift was personal and social, you would not be required to report such a gift.

You also asked, on behalf of your fellow officers, whether the value of the tickets would need to be reported by those who purchased the discounted tickets in the normal course through the chief's secretary subsidized by PBPF. In most instances, action under the code of ethics is prospective, that is, a violation may not be sustained for actions occurring prior to the effective date of the code. This is true when the code affects substantive rights and liabilities.<sup>1</sup> Simply put, a person is not held responsible for conduct that was not prohibited at the time. For example, a person may not be held accountable under the code for accepting a prohibited gift before the code was enacted and became effective. However, the reporting requirement merely asks that non-exempt gifts be reported as of November 1, 2011, after the June enactment of the revised Code of Ethics. Substantive enforcement measures would only apply to a failure to report, not to the underlying content of the report. According to the United States Supreme Court, "A statute does not operate "retrospectively" merely because it is applied in a case

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<sup>1</sup> Arrow Air, Inc. v. Walsh, 645 So.2d 422 (Fla. 1994)(Whistleblower statute cannot be applied retroactively, since it created a new cause of action and affected substantive rights and liabilities)

arising from conduct antedating the statute's enactment, or upsets expectations based on prior law. Rather the court must ask whether the new provision attaches new legal consequences to events completed before its enactment."<sup>2</sup> We are of the opinion that the reporting requirement is procedural in nature and does not affect the substantive rights of the reporting individual. Therefore, unless an exclusion exists, the difference in value between the ticketed price of the January, 2011, event (\$500) and the cost paid by the recipients (\$25) must be reported as required under the code.

IN SUMMARY, based on the facts you have submitted, the tickets to the Policeman's Ball that you received from a personal friend and co-worker, as described in section 2-444(f)(2)a. of the Code of Ethics, is not reportable. However, the difference in value between the public ticketed price and the amount paid by officers, obtained through the PBPF and distributed by the Chief's secretary, are reportable as gifts from PBPF. These gifts are required to be reported if made between October 1, 2010 and September 30, 2011.

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

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<sup>2</sup> Landgraf v. USI Film Products, 114 S.Ct. 1483, 1499 (1994)

## **X – RULES OF PROCEDURE AMENDMENTS TO 2.8(g) AND 5.8**

### **Staff analysis:**

- a. In reviewing the Rules of Procedure, section 2.8 Advisory Opinion Letter Form, subsection (g) requires signatures of both the Executive Director and Chairperson or Co-Chairperson on the advisory opinion letter form. The Commission on Ethics ordinance requires that the opinion *be rendered by the commission on ethics on a timely basis*, and that opinions be *numbered, dated and published*. The ordinance is silent otherwise as to the form of the letter. For reference, Dade County has no countersign requirement and opinions are signed by the E.D.

### **Staff Recommendation:**

Since the COE renders all opinions in public session, the dual signature requirement under the Rules of Procedure will lead to an inefficient process and delay in publication. Therefore, staff recommends that rule 2.8(g) be amended to read: *Signature of the Executive Director or COE Staff Counsel*

### **Staff analysis:**

- b. Section E. Probable Cause Determination, section 5.9 was recently changed to reflect the revised Commission on Ethics ordinance requirement that in all cases, once probable cause is found by the commission, the matter is set for a final hearing within 120 days. This change to the ordinance makes section 5.8 (request for public hearing) inapplicable because setting a final hearing is no longer discretionary.

### **Staff Recommendation:**

Section 5.9 is a misstatement of the requirements under the revised COE ordinance and should be deleted from the COE Rules of Procedure.