

OATH OF OFFICE

September 12, 2012 1:15 pm – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561.233.0724
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Commissioners
Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Ronald E. Harbison
Daniel T. Galo
Vacant

Executive Director
Alan S. Johnson

Staff Counsel
Megan C. Rogers

Executive Assistant
Gina A. Levesque

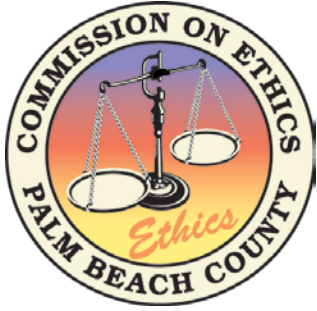
Senior Investigator
Mark E. Bannon

Investigator
James A. Poag

Administration of the Oath of Office as Commissioners of the Palm Beach County Commission on Ethics by the Honorable Peter M. Evans, Senior County Court Judge of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida

Pat Archer has been appointed by the Palm Beach County League of Cities to complete the term of former Commissioner Judge Edward Rodgers (Ret.)

The term of office will end on February 28, 2014.



Agenda

September 12, 2012 – 1:30 pm
Governmental Center,
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Commissioners Chambers

Executive Session from 2:00pm to 3:30pm Regular Agenda will begin at 3:45pm

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- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from August 2, 2012
- V. Negotiated Settlement – C11-027
- VI. Executive Sessions
 - a. C12-006
 - b. C12-004
 - c. C12-007
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-060
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 12-058
 - b. RQO 12-059
 - c. RQO 12-061
 - d. RQO 12-062 (with attached requested submission)
 - e. RQO 12-063
 - f. RQO 12-064
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

AUGUST 2, 2012

**THURSDAY
1:35 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA – Absent

STAFF:

Mark E. Bannon, COE Senior Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office (Recording)
Paula Wilson, Deputy Clerk, Clerk & Comptroller's Office (Condensing)

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Executive Director, Alan Johnson, Esq., stated that a quorum existed.

Commissioner Farach stated that anyone wishing to speak should submit a public comment card, and that electronic devices should be turned off.

IV. APPROVAL OF MINUTES FROM JULY 12, 2012

MOTION to approve the July 12, 2012, minutes. Motion by Robin Fiore, and seconded by Daniel Galo.

Commissioner Farach stated that on page 20 of the July 12, 2012, minutes he believed it should read, Mr. Seymour stated that he could not agree to the ruling contained in the order, but he had no objection to its form. He also said that on the following line, the words, and permitted counsel to review the form, should be added.

Mr. Johnson informed the COE that staff did not review the minutes this month, and that hopefully next month someone could be hired to perform that task. He added that staff may need to review the changes with the recording of the meeting, and it would be brought back if the corrections were inaccurate.

AMENDED MOTION to include the changes as discussed. The maker and the seconder agreed, and the motion carried 3-0. Ronald Harbison absent.

RECESS

At 1:39 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 3:36 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, and Daniel Galo present.

V. EXECUTIVE SESSION (C12-003)

- a. Probable Cause Hearing (Closed Session)**
- b. Public Report and Finding of Probable Cause**

Commissioner Fiore read the public report and finding of probable cause as follows:

Complainant, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above referenced complaint on May 18, 2012, alleging possible ethics violations involving Respondent, J. Jerome Taylor, Chair of the City of Riviera Beach Housing Authority (RBHA). The complaint alleges five Code of Ethics violations involving the use of RBHA funds.

V.b. – CONTINUED

Count 1 alleges that on or about January 20, 2012, Respondent misused his official position by submitting an invoice for payment of \$950 for services provided to RBHA, claiming the funds were a reimbursement for payments Respondent had made to at least two persons who completed work for RHBA, and receiving a check as payment from RBHA. No documentation or names of individuals providing the purported work were provided by Respondent to verify these expenses. Respondent knew or should have known through the exercise of reasonable care that the payment of \$950 constituted a financial benefit to himself, not available to the similarly situated members of the general public, in violation of Article XIII, Section 2-443(a), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics.

Count 2 alleges that Respondent, at a meeting of the RBHA held on February 13, 2012, participated and voted to accept the financial accounting submitted to RBHA, which included payment to himself in the amount of \$950, failed to disclose this financial conflict at a public meeting, failed to abstain from voting, and failed to file the required State of Florida Form 8B as required under the Code of Ethics, in violation of Article XIII, §2-443(c), *Disclosure of voting conflicts*, of the Palm Beach County Code of Ethics.

Count 3 alleges that on or about March 16, 2012, Respondent misused his official position by directing the RBHA Executive Director to issue a check, and submitting an invoice for payment of \$1000, purportedly for services provided to RBHA, and retaining a portion of the payment, constituting a financial benefit to himself, not available to similarly situated members of the general public, in violation of Article XIII, Section 2-443(a), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics.

Count 4 alleges that on or about March 16, 2012, Respondent corruptly attempted to secure a special privilege, benefit, or exemption for himself with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties, by retaining a portion of a \$1000 RHBA check, and purportedly designated for pest control services, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

V.b. – CONTINUED

Count 5 alleges that on April 10, 2012, Respondent participated and voted to accept the financial accounting submitted to RBHA which included the March 16, 2012, payment of \$1000, a portion of which was retained by the Respondent, and failed to disclose this financial conflict at the public meeting, failed to abstain from voting, and failed to file the required State of Florida Form 8B as required under the Code of Ethics, in violation of Article XIII, §2-443(c), *Disclosure of voting conflicts*, of the Palm Beach County Code of Ethics.

Pursuant to Chapter 8, Article XIII, Section 2-443(a), *Misuse of public office or employment* prohibits a public official or employee from using their official position to take any action, or to influence others to take any action, in a manner which he or she knows or should know, will result in a special financial benefit, not shared by members of the general public, for any person or entity listed in §2-443(a)(1-7), including him or herself, an outside business or employer, or a customer or client of their outside business or employer.

Pursuant to Chapter 8, Article XIII, Section 2-443(b), *Corrupt misuse of official position* prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

Pursuant to Chapter 8, Article XIII, §2-443(c), *Disclosure of voting conflicts* states that an official shall abstain from voting and not participate in any matter that will result in a special financial benefit for him or herself. The official must not only publicly disclose the nature of the conflict when abstaining, but must also file a State of Florida conflict of interest Form 8B pursuant to the requirements of §112.3143, Florida Statutes, and submit a copy to the Commission on Ethics.

V.b. – CONTINUED

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the county code of ethics.

On May 18, 2012, the complaint was determined by staff to be legally sufficient. The matter had been brought to the attention of COE staff by a member of the RBHA and pursuant to COE Rule of Procedure 4.1.3 a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding, a Memorandum of Legal Sufficiency was filed and an investigation commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on August 2, 2012, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the Commission conducted a probable cause hearing. The Commission reviewed and considered the inquiry and investigative reports, documentary submissions, recommendation of staff, written response of the Respondent as well as oral statements of the Respondent and Advocate. At the conclusion of the hearing, the Commission on Ethics determined that probable cause exists in this matter.

Accordingly, we find that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the Respondent violated the Palm Beach County Code of Ethics as follows:

Count 1, Article XIII, section 2-443(a) (Misuse of Public Office or Employment)

Count 2, Article XIII, section 2-443(c) (Disclosure of Voting Conflicts)

Count 3, Article XIII, section 2-443(a) (Misuse of Public Office or Employment)

Count 4, Article XIII, section 2-443(b) (Corrupt Misuse of Official Position)

V.b. – CONTINUED

Count 5, Article XIII, section 2-443(c) (Disclosure of Voting Conflicts)

Therefore it is:

Ordered and adjudged that probable cause exists and the complaint against Respondent, J. Jerome Taylor, is hereby set for final hearing within 120 days to be coordinated between the parties.

Done and ordered by the Palm Beach County Commission on Ethics in public session on August 2, 2012, signed: Manuel Farach, chair.

(CLERK'S NOTE: The clerk added the correct language as printed, according to the public report and the finding of probable cause.)

VI. PROCESSED ADVISORY OPINIONS (Consent Agenda)

VI.a. Request for Opinion (RQO) 12-052

VI.b. RQO 12-056

VI.c. RQO 12-057

MOTION to approve the Consent Agenda. Motion by Daniel Galo, seconded by Robin Fiore, and carried 3-0. Ronald Harbison absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 12-038

Mr. Johnson stated that:

- Michael Malone, president, chief executive officer, and chief paid executive of the Greater Delray Beach Chamber of Commerce (Chamber) asked whether he needed to register as a lobbyist if he met periodically with elected officials, where interaction with government leaders, both elected and appointed, was normal operating practice for a person in his capacity.

VIII.a. – CONTINUED

- Mr. Malone also served on the board of directors for a nongovernmental, nonprofit board called the Sister Cities of Delray Beach (Sister Cities), and an advisory board named the Charter Review Commission of the City of Delray Beach (CRC).
- The Chamber's members represented 14 percent of all businesses in Delray.
- The Chamber's role and function was to promote economic development, membership services, community development, and Delray's free enterprise system.
- The Chamber president's responsibilities were to:
 - represent the Chamber to its members and the general public;
 - manage the day-to-day operations of the organization, including but not limited to, staffing, building programs, events, finance, and records;
 - be a spokesman for the organization;
 - provide counsel to the Chamber's board of directors; and,
 - promote policies and positions of the organizations outlined by the Chamber.
- In this capacity, Mr. Malone met with prospective and present businesses, Chamber members and nonmembers, Delray public officials, and spoke with various groups.
- Under the County Code of Ethics' (Code) definition of lobbying, if Mr. Malone would be engaging in lobbying, if he met with government officials, seeking to influence them in certain decisions.
- Although he performed many other functions, Mr. Malone did not meet the Code's lobbying definition since he did not meet with governmental entities on behalf of a principal, only on behalf of his employer.

VIII.a. – CONTINUED

- Mr. Malone's position on the Sister Cities' board of directors did not present any Code issue since it was a nonprofit organization.
- If specific Chamber issues came before the CRC regarding financial and other benefits, he should abstain from those matters.
- The Code specified that individuals could not contract themselves or their outside employer with their governing body; however, exemptions existed for advisory board members, as long as the contract did not include the advisory board in any way.

Commissioner Fiore said that the individual should register as a lobbyist. She added that in this case, the employer was an organization with the main function of lobbying; and since Mr. Malone was the chief paid officer of this collective organization, she regarded his job as a lobbyist.

Commissioner Farach said that staff's opinion was correct under the lobbyist ordinance definition; however, he was concerned with how it was written.

Commissioner Fiore stated that she considered the individual to be lobbying for every member; therefore, by definition the person was considered a lobbyist. She added that calling the individual a lobbyist would not harm the person or their organization, since it did not prevent them from carrying out their main function.

MOTION to approve proposed advisory opinion letter RQO 12-038 as presented by staff. Motion by Daniel Galo, and seconded by Manual Farach.

Assistant County Attorney Leonard Berger said that:

- Chambers of Commerce performed roles aside from trying to influence government.
- If the COE determined that every Chamber member was a principal to the lobbyist, many organizations not associated with government could be affected by the decision.
- The public was entitled to know whether someone was a paid lobbyist, since registration requirements were important for transparency.

VIII.a. – CONTINUED

Commissioner Fiore said that receiving a benefit represented another issue. She added that in this instance, Mr. Malone wrote that having interaction with government leaders, both elected and appointed, was a normal operating practice for a person in his capacity; however, relationships regarding the distribution of funds and amenities should be made apparent.

Mr. Berger stated that under the lobbyist definition, he believed that Mr. Malone was primarily employed by the Chamber rather than by each Chamber member, since membership changed in Chamber of Commerce organizations.

League of Cities Executive Director Richard Radcliffe said that generally a chamber of commerce was not a lobbyist organization and that no commerce had influenced a governmental decision throughout his experience.

Commissioner Fiore said that she thought the Chamber had evolved into an organization that took public positions, and then lobbied for them.

Responding to Commissioner Fiore, Mr. Johnson stated that he believed that Mr. Malone's statement that he met periodically with elected officials could be characterized as occasional.

Commissioner Fiore suggested that the summary paragraph on page 53 should read: Based on the information that you have provided, to the extent that your contacts and relations with government are not your principal responsibility, you would not have to register as a lobbyist.

Mr. Johnson stated that Commissioner Fiore's suggested language was appropriate, and could be included in the COE opinion.

Commissioner Galo said that he had no objection to the requested amendment.

Commissioner Fiore read the suggested language as follows:

Based upon the information that you have provided, to the extent that your contacts and relations with the government on behalf of the Chamber are occasional, and are not your principal responsibility as president of the Chamber, then under those specific facts, you would not be required to register as a lobbyist.

VIII.a. – CONTINUED

Mr. Johnson responded that:

- The statement was partially accurate since government contact did not have to be occasional.
- An individual still would not be a lobbyist under the ordinance, unless it was his/her principal responsibility; and
- The opinion was worded to reflect Mr. Malone's statements and to show that his governmental contacts were occasional.

Commissioner Farach said that if Mr. Malone was a full-time lobbyist, and it was his principal responsibility, then the misrepresentation of Mr. Johnson would constitute sufficient grounds to void the opinion. He added that he was comfortable with the proposed language, but understood the concern regarding where the factual analysis line would be drawn.

Commissioner Fiore said that since she believed it may be a mischaracterization, the words, are occasional, should be deleted.

Commissioner Galo said that:

- He was concerned that defining presidents or leaders of specific organizations as lobbyists would require the same definition for organizations such as the Bar Association.
- Using the word, occasional, was not a misrepresentation of Mr. Malone's duties.
- The Chamber promoted itself, so interaction with government would occur, which was allowable within the lobbying rules.

VIII.a. – CONTINUED

Mr. Johnson said that staff recommended that the words, are occasional, be stricken since it did not change the letter.

Commissioner Galo suggested that his motion be withdrawn; however, Commissioner Fiore stated that she would support it with the amendment that the language, are occasional, be removed.

AMENDED MOTION to approve the proposed advisory opinion letter RQO 12-038 as amended to remove the words, are occasional. Motion by Daniel Galo, and seconded by Robin Fiore and carried 3-0. Commissioner Ronald Harbison absent.

VIII.b. RQO 12-051

Megan Rogers, COE staff counsel, stated that:

- A town clerk asked whether her office may provide an elected official with an email database of local condominium presidents and homeowners' association directors; and, whether the use of the database by the elected official to advocate a position on an upcoming issue before the town council violated the code.
- The database was available to the public through a public-records request process.
- Staff had submitted that:
 - An official was prohibited from using his or her official position to gain a special financial benefit.
 - Under the Code, no indication that a special financial benefit for the elected official existed since the document was available through a public-records request.
 - The Code did not limit or regulate political activity not involving a corrupt misuse of official position.
 - Other political activities or public records disclosure were controlled by State and federal laws.

VIII.b. – CONTINUED

- The official was provided with the document after requesting it from the town manager.
- It was not under staff's jurisdiction to investigate the procedures of a public-records request within the town.
- She was unsure whether the official used the town's procedure for a public-records request.

Commissioner Fiore said that since the information was available to the official through a public-records request, he was not receiving a special financial benefit.

Ms. Rogers said that:

- The town could determine its public-records-request procedure.
- The town's informal procedure was to request a document from the town manager who then provided it to the citizen. Whether that procedure was performed under all circumstances was not subject to the facts.
- Even if special treatment was received in the official's position as the mayor, no financial benefit was attached to receiving the document.
- Furthermore, the official received the document in his official capacity to discuss issues with town residents.

Commissioner Farach summarizing staff's opinion said that, although the procedures may or may not have been followed, it was not done with corrupt intent; therefore, a violation of the Code's section 2-443 did not exist.

Ms. Rogers added that no special financial benefit or corrupt intent existed, in this instance, which would indicate a misuse of office.

Commissioner Galo said that he did not think that the public-records request statute allowed a public entity to decline a specific methodology in which the request could be made. He said that an oral representation was adequate and that the official could rightfully receive the document.

Commissioner Farach asked whether a public-records request defined by the Statute was made; or, was the information unclear from the facts that were given.

VIII.b. – CONTINUED

Ms. Rogers said that her understanding from the town clerk was that:

- The town mayor had requested a document from the town manager.
- The mayor called the individuals listed on the document.
- The town clerk then received a complaint from an individual on the list who stated that he/she did not wish to be contacted by the mayor.
- The town clerk contacted the COE to determine whether a conflict existed and whether her office should not provide the information going forward.
- Staff determined that no special financial benefit existed; that public-records requests were a matter of State law; and that the act of contacting individuals on behalf of a matter coming before the town's council would not result in a special financial benefit, nor did it appear to be corrupt misuse.

MOTION to approve proposed advisory opinion letter RQO 12-051. Motion by Robin Fiore, seconded by Daniel Galo, and carried 3-0. Ronald Harbison absent.

VIII.c. RQO 12-053

Ms. Rogers stated that:

- A municipal supervisor asked whether two members of her staff may attend a local training session paid for by the City of Lake Worth (City).
- The training cost \$50, and was sponsored by a vendor who would give a \$50 voucher to all attendees for their services.
- The vendor was a water testing company that provided only institutional testing services.
- The voucher would be given back to the City and used for its future business.

VIII.c. – CONTINUED

- Staff submitted that:
 - Public employees were prohibited from accepting gifts over \$100 in the aggregate during the calendar year from a vendor of their public employer unless an exception applied.
 - Gifts provided to a government employee by a vendor and accepted on behalf of the government for a public purpose were not subject to this prohibition.
 - The public employees were not prohibited from attending this local vendor-sponsored training in an official capacity and accepting the \$50 voucher for testing services on behalf of their governmental employer.
 - If someone accepted the voucher on behalf of him/herself, it would be considered part of the aggregate gift prohibition from vendors and lobbyists.
 - Under these circumstances, no value existed for an individual gift since it was an institutional testing service that would provide the voucher back to the City.
 - The voucher was for the City of Lake Worth and it would be included with materials at the end of the training session.

Commissioner Farach stated that he was concerned that the letter could be read in other ways, and he suggested clearer language to emphasize that the individuals would not be accepting the voucher for themselves. He said that the third paragraph on the first page could read, for the benefit of their governmental employer. Ms. Rogers said that the suggested language would be changed in the first paragraph on the second page and in the summary paragraph of the letter.

MOTION to approve proposed advisory opinion letter RQO 12-053 as amended to include the changes as discussed. Motion by Daniel Galo, seconded by Robin Fiore, and carried 3-0. Ronald Harbison absent.

VIII.d. RQO 12-054

Mr. Johnson reported that:

- Real estate development consultant, Kevin Foley, asked whether he should register as a lobbyist under the Palm Beach County Registration Ordinance (ordinance) since he spent less than one percent of his consultation time in contact with a government official or staff members.
- Mr. Foley met with Town of Jupiter (Jupiter) staff and one council person.
- Mr. Foley said that he was contacted by Jupiter's manager who said that he should register as a lobbyist or ask for a COE opinion.
- Mr. Foley met with COE staff and provided a detailed account of his job duties.
- Most of his work did not attempt to influence government; however, he was a consultant for a principal, Braman Motorcars (Braman), who was redeveloping approximately nine dealerships.
- Mr. Foley was involved in ideas on developing these properties and on how to mitigate certain Jupiter regulations that currently disallowed dealerships.
- Staff had determined that Mr. Foley tried to influence or obtain the goodwill of Jupiter's staff and elected officials; therefore, he should register as a lobbyist.
- Even if he obtained the goodwill of staff or influenced any future legislative decisions at one meeting only, since Braman was the principle, Mr. Foley was required to register.
- Staff had determined that Mr. Foley's activities constituted lobbying within the meaning of the ordinance and the Code.
- Staff said that Mr. Foley was offered to appear by telephone or ask that the item be tabled and he declined both offers.

Commissioner Farach said that the following decisions regarding lobbying were made prior to the proposed opinion of the ordinance:

VIII.d. – CONTINUED

- In advisory opinion RQO 12-025, the COE determined that one out of 500 trees in a line of agricultural landscaping was considered lobbying;
 - In advisory opinion RQO 12-033, the COE determined that a director of business development whose company was a vendor to municipalities was not considered a lobbyist under the ordinance;
 - In advisory opinion RQO 12-050, the COE determined that an individual could be a lobbyist, withdraw the next day, and was not considered a lobbyist under the ordinance; and,
 - In proposed advisory opinion RQO 12-054, if Mr. Foley was an employee as opposed to a consultant, he would not be considered a lobbyist.
- Although the ordinance was written and adopted by the Board of County Commissioners and enforced and interpreted by the COE, it appeared that the ordinance may be too broad in some areas, and not broad enough in others.

MOTION to approve proposed advisory opinion letter RQO 12-054. Motion by Robin Fiore, seconded by Daniel Galo, and carried 3-0. Ronald Harbison absent.

VIII.e. RQO 12-055

Mr. Johnson said that:

- A Delray Assistant City Attorney asked whether a local cruise company, that was not a vendor or a lobbyist, may hold an appreciation cruise for Delray Parks and Recreation Department employees and their families.
- Ordinarily a public employee could not receive a benefit for any specific act or for the performance of their job.
- The COE had issued opinions regarding gifts that were general in nature and not directed at specific acts of individual employees.

VIII.e. – CONTINUED

- In advisory opinion RQO 11-07, lunch and the complimentary use of golf and tennis facilities as an expression of appreciation for the work of municipal public safety employees, was found not to violate this prohibition since the donor was not a municipal vendor.
- Similarly, in advisory opinion RQO 11-053, awards given by a private entity to municipal employees, generally for outstanding performance, such as employee of the year or officer of the month for public safety, were not prohibited where the donor was not engaged in vending or lobbying with the town.
- Based on the specific facts and circumstances neither a quid pro quo nor a relationship of a vendor or a lobbyist existed; the situation was only a corporate partner of Delray offering its appreciation to a general group of employees for no specific act; therefore, staff believed that no violation of the code was present.
- The cruise still constituted a gift, and if it exceeded \$100, reporting was required.
- The gift was cumulative in terms of invited employees' families.
- The tickets were valued at approximately \$20 for the cost of the cruise and the barbeque.

Commissioner Fiore said that she assumed that the non-vendor company would not become a vendor in the near future.

Mr. Johnson said that based on the facts provided, no indication existed that the company would ever be positioned as a vendor.

Commissioner Farach commented that if an entity received dollars from the governmental unit, it was considered a vendor; however, if it paid money to the governmental unit, it was not considered a vendor or lobbyist.

Mr. Johnson stated that the company rented boat slips from the governmental unit, which made them a receiver of services and goods, not a vendor.

MOTION to approve proposed advisory opinion letter RQO 12-055. Motion by Robin Fiore, seconded by Daniel Galo, and carried 3-0. Ronald Harbison absent.

IX. SOCIAL MEDIA UPDATE

Ms. Rogers said that:

- Social media was a mechanism to increase the COE's outreach to county citizens.
- The next step was drafting a social media policy, taking into account previously discussed public-records requests, preservation, first amendment issues, and content restrictions.
- The draft policy was based on the current County policy, the American Bar Association's governmental agency recommendations, and the San Francisco Ethics Commission Policy.
- Since Ben Evans, COE clerical assistant had taken a full-time position at the Palm Beach County Healthcare District, implementing the policy and future social media involvement would fall on existing staff.
- Staff had reviewed hiring Mr. Evans in a part-time position to monitor compliance with the public records sections of the policy.
- Should the COE's social media presence grow, staff may request additional funding to create a full-time position.
- Subject to COE approval, staff would launch Facebook, YouTube, and Twitter pages.
 - The Facebook page would address meetings, provide public information and advisory opinions, and reference national and local ethics issues.
 - Facebook and YouTube pages would be used for extra issue-specific trainings.
 - Staff would review developing voting-conflict training, gift-law training, and charitable-organization training for the YouTube channel.
 - Twitter would be primarily used for its public communication aspects.

IX. SOCIAL MEDIA UPDATE CONTINUED

- The public would be able to receive text messages via Twitter when COE public meetings took place.
- As new social media sites were created, staff would consider launching programs.
- Staff had drafted a public-comment procedure, since several risks were associated with allowing public comments.
- Providing a government-managed Facebook page created a public forum which was associated with certain First Amendment rights.
- As defined by the public comment policy listed on the Facebook page, staff could remove inappropriate comments.
- Staff did not foresee a need to increase monitoring the COE's Facebook page on an hourly basis at that time.
- Certain buzzwords could be automatically excluded and would be disabled by Facebook.
- A First Amendment issue would not exist by prohibiting YouTube comments and allowing only one-way communications on Twitter.

Commissioner Galo said that the social-media program was beneficial in terms of public involvements; however, he was concerned about the appropriateness of posted comments. He added that the policy was appropriate and that he wished to ensure to its maintenance.

Ms. Rogers stated that Facebook's spam and objectionable terms filter would target certain words or language that needed immediate removal. She added that the specific public-comment policy was based on the United States Army's policy and was challenged and upheld under First Amendment grounds.

Commissioner Farach said that he hoped that other public outreach efforts would complement the social-media effort.

Mr. Johnson said that staff would implement some of the previously discussed ideas as opportunity permitted.

X. POLICY AND PROCEDURE CLARIFICATION RE: PROCESSING OF COMPLAINTS THAT ARE FILED WITHIN 30 DAYS OF AN ELECTION

Mr. Johnson said that:

- Commissioner Fiore expressed concerned about how the COE processed complaints that were filed within 30 days of an election.
- Staff would determine that safeguards were already in place and whether any opportunity existed within the Code and the COE ordinance to put greater precautions in place.
- The COE's rules of procedure and ordinance controlled the timing of when a complaint would become public.
- Staff had recommended that the COE not change and ban complaints within the 30-day timeframe.
- Individuals could not be stopped from sending complaints, and staff would only be allowed to inform the media that they could neither confirm nor deny the information.
- The process remained private so that at any time, a respondent was not unduly tried and convicted before a COE determination occurred. He added that since significant and appropriate safeguards were in place, no action was warranted at that time.
- Mistakes would not occur currently since policies and procedures were in place.

Commissioner Farach said that in the past, sitting officials had been the target of ethics complaints by opponents, and the COE was concerned that those ethics complaints were done for purely political reasons and not for a true Code violation.

Mr. Radcliffe responded that the League of Cities agreed with staff's intent, and it was encouraged that policies and procedures were already in place.

XI. EXECUTIVE DIRECTOR'S COMMENTS

XI.a.

DISCUSSED: Prospective COE Members.

Mr. Johnson said that staff had identified two or three nominees from the League of Cities who wished to become COE members.

XII. COMMISSION COMMENTS

XII.a.

DISCUSSED: User-Friendly COE Initiatives.

Commissioner Fiore said that:

- She had discussions with individuals who were unaware of the COE and had trouble understanding its function due to its legal nature.
- The COE could review creating user-friendly initiatives, such as creating plain language paragraphs that explained COE decisions.
- No change to the COE process would occur, but it would make it easier for the public to understand and that the social media program was good for public outreach.

Commissioner Farach added that he asked Mr. Johnson to look into further outreach to County schools, including a teaching curriculum on ethics for middle and high schools. For the elementary schools, he was working on developing a Robin Hood skit that taught ethics.

XII.b.

DISCUSSED: Inspector General Oversight Committee.

Commissioner Farach thanked the members of the COE for attending the August 1, 2012, Inspector General Oversight Committee meeting.

XII.c.

DISCUSSED: Future Ethics Goals in the County.

Commissioner Farach stated that that in the next several years, the COE should focus more on what needed to be accomplished regarding ethics in the County's future as opposed to its past.

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

MOTION to adjourn. Motion by Daniel Galo, seconded by Robin Fiore, and carried 3-0. Ronald Harbison absent.

At 5:27 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

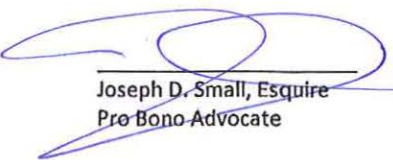
Negotiated Settlement

In Re: Scott Swerdlin

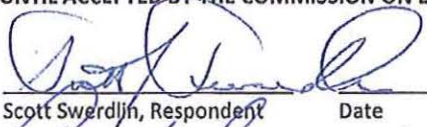
Case No.: C11-027

Pursuant To section 2-260(d) of the Palm Beach County Commission on Ethics ordinance, the Palm Beach County Commission on Ethics (COE) may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. Commission on Ethics Rules of Procedure 6.16 permits the COE Advocate to enter into settlement negotiations and present proposed agreements to the COE for consideration and approval. Advocate and Respondent do hereby submit the following settlement agreement in the above captioned matter based upon the following terms and conditions:


1. Based on the findings by the COE and the facts and circumstances as set forth in the attached Letter of Reprimand, Respondent admits to the allegations contained in the Complaint as to Counts 1 and 3.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to dismiss Count 2 of the Complaint, impose a \$500 fine per violation (totaling \$1,000) prescribed under section 2-448(b) of the Palm Beach County Code of Ethics and issue the Letter of Reprimand.
3. Respondent is no longer a member of the Wellington Equestrian Preserve Committee (the Committee); Respondent's term of membership on the Committee has expired.
4. Pursuant to this Proposed Settlement Agreement, Respondent has completed the State of Florida Conflict of Interest Form 8B and will, after the Settlement Agreement is accepted by the COE, file it with the person responsible for recording the minutes of the Equestrian Preserve Committee meeting and file a copy with the Palm Beach County Commission on Ethics as required under the Code.
5. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to §2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
6. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that he is doing so freely, voluntarily and without duress; that he is competent to enter this agreement; that he has reviewed this Proposed Settlement Agreement with his attorney; and that he has fully and completely read and understands the terms and conditions herein.
7. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
8. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
9. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**


Joseph D. Small, Esquire
Pro Bono Advocate

9/6/12
Date


Scott Swerdlin, Respondent

6 Sept 2012
Date


Brian Seymour, Esquire
Respondent's Representative

9/6/12
Date

Public Report and Final Order

COMPLAINANT, Carol Coleman, filed the above referenced COMPLAINT on December 21, 2011, alleging that the RESPONDENT, Dr. Scott Swerdlin, violated Chapter 8, Article XIII, Section 2-443(a), (b) and (c) of the Palm Beach County Code of Ethics when, as Chairman of the Village of Wellington Equestrian Preserve Committee, RESPONDENT substantially participated in a matter that would result in a special financial benefit to the applicant, Equestrian Sports Productions, a customer or client of his outside businesses, Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. In addition, upon ultimately abstaining from the vote, RESPONDENT failed to file a State of Florida Conflict Form 8B, and submit a completed copy to the Palm Beach County Commission on Ethics as required.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the Code of Ethics.

Pursuant to Chapter 8, Article XIII, Section 2-443(a) **Misuse of public office of 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;*
- (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;*
- (5) *A customer or client of the official or employee's outside employer or business;*

Pursuant to Chapter 8, Article XIII, Section 2-443(c) **Disclosure of voting conflicts.** *County and municipal officials as applicable shall abstain from voting and not participate in any matter that will*

¹ Article V, Division 8, section 2-258(a). *Powers and Duties.* 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;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. 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, as set forth in subsections (a)(1) through (7).

As identified in Section 2-443(a)(5) an official is prohibited from voting or participating in a matter that will result in a special financial benefit to a customer or client of an official's outside business or employer. A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand (\$10,000) dollars.

On January 30, 2012 the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. On March 1, 2012, in executive session, the COMMISSION ON ETHICS (COE) found PROBABLE CAUSE to believe a violation may have occurred and set the matter for final hearing. On September 12, 2012, the RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT including a LETTER OF REPRIMAND to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned LETTER OF REPRIMAND.

According to the NEGOTIATED SETTLEMENT and based on the facts as set forth in the LETTER OF REPRIMAND, RESPONDENT admits to the allegations contained in Counts One and Three of the COMPLAINT that he violated §§2-443(a) and (c) of the Palm Beach County Code of Ethics. RESPONDENT agrees to accept a LETTER OF REPRIMAND and to pay a total fine of One Thousand (\$1,000) Dollars. Count Two is DISMISSED. Pursuant to The Commission on Ethics Ordinance §2-260.1 *Public hearing procedures*, the Commission finds that the violation was intentional/unintentional. As to Count one, the Commission assesses a fine of Five Hundred (\$500) Dollars; as to Count three, the Commission assesses a fine of Five Hundred (\$500) Dollars; and the RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon acceptance of the LETTER OF REPRIMAND and payment of the aforementioned \$1,000 Fine.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 12th day of September, 2012.

Palm Beach County Commission on Ethics

By:

Manuel Farach, Chair

PROPOSED

September 12, 2012

Dr. Scott Swerdlin
13125 Southfields Road
Wellington, FL 33414

Re: Complaint No. C11-027
Letter of Reprimand

Dear Dr. Swerdlin:

When the Commission on Ethics met in executive session on March 1, 2012, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically §§2-443(a), (b) and (c). On September 12th, 2012, you admitted to violating §2-443(a) of the Palm Beach County Code of Ethics entitled, "Misuse of public office of employment" and §2-443(c) of the Palm Beach County Code of Ethics entitled "Disclosure of voting conflicts." The settlement agreement in this case provides for you to accept this public reprimand.

Chapter 8, Article XIII, Section 2-443(a) **Misuse of public office of 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; (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; (5) A customer or client of the official or employee's outside employer or business;*

Chapter 8, Article XIII, §2-443(c) **Disclosure of voting conflicts.** *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) above.¹ The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. 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, as set forth in subsections (a)(1) through (7).*

The facts are as follows:

You were the Chairman of the Equestrian Preserve Committee (the Committee), an advisory board of the Village of Wellington. On December 14, 2011, the Committee met to discuss and vote on planning and zoning amendments for the proposed Equestrian Village Project (the Project). A Project applicant was Equestrian Sports Productions (ESP) and the Project was presented at the hearing by Mr. Mark Bellissimo on behalf of Wellington Equestrian Partners (WEP). Mr. Bellissimo is the Managing Member of WEP and Chief Executive Officer of ESP. ESP is a wholly owned subsidiary of WEP. ESP produces the 12 week Winter Equestrian Festival (the Festival) as well as other

¹ §2-443(a)(5) A customer or client of the official or employee's outside employer or business.

§2-442 Definitions. Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

equestrian events. You are the manager/owner and registered agent of Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. Palm Beach Equine Medical Centers and/or Palm Beach Equine Clinic have been the official veterinarians for ESP events since 2009. As the official veterinarians, your staff is on site at the Festival 5 days per week for 12 weeks, on an average of 10 hours per day for the Festival, as well as similarly serving during the summer and early fall for other ESP programming. In addition, your businesses provided ESP with equine ambulance services during these events. For these services, you receive advertising at ESP events at no charge. The value of the services you provided to ESP exceeded \$10,000 for the 24 months preceding the December 2011 meeting making ESP a "customer or client" of your outside business. Because of the closely knit relationship between ESP and WEP - that ESP is a wholly owned subsidiary of WEP and that Mr. Bellissimo ran and publically advertised both companies in such a manner as to make them effectively interchangeable in terms of identity and purpose - WEP also meets the definition of your "customer or client" creating a conflict of interest. The Palm Beach County Code of Ethics prohibits you from voting or participating in a matter that would result in a special financial benefit for you, your outside business or a "customer or client" of your outside business.

Prior to and during the Committee meeting on December 14, 2011, you had been advised by Village of Wellington Attorney Jeffrey Kurtz that you had a potential conflict of interest: You received a copy of the State Conflict of Interest Form 8B as well as a copy of the relevant sections of the Palm Beach County Code of Ethics on December 13, 2011. At the start of the meeting, Mr. Kurtz advised all members that if anyone had a conflict of interest in the Project, they were required to abstain and not participate in the discussion prior to the vote. Notwithstanding your conflict of interest, you did not at that time abstain. You presided over the public hearing during the presentation by Mr. Bellissimo, his agents and members of the public. After the close of testimony, you were advised of the conflict and, after being advised that a vote was required, then stepped down and did not further participate or vote. You knew or should have known that WEP, and by extension ESP, would receive a special financial benefit and never have participated in the meeting. Subsequently, you have failed to file a State Conflict of Interest Form 8B with the Palm Beach County Commission on Ethics as required under the Palm Beach County Code of Ethics.

Your actions constituted two violations of the Palm Beach County Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public official, you are an agent of the people and hold your position for the benefit of the public. The people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to consider the letter and spirit of the Palm Beach County Code of Ethics and apply them in all future actions as a member of any public body to which you may be a part.

Sincerely,

Manuel Farach, Chairman
Palm Beach County Commission on Ethics

MF/gal

Copies to: Joseph D. Small, Esquire, Pro Bono Advocate
Brian Seymour, Esquire

VII. Processed Advisory Opinions (Consent Agenda)

a. RQO 12-060 Mary Miles

A Town Clerk asked whether her Town may give December holiday gifts to Town employees and volunteers.

Staff submits the following for COE approval: It is the intention of the Town to give all employees and volunteer board members holiday gifts purchased from Town funds and approved by the Town Council. The gifts contemplated are, for example, turkeys or \$25 Publix gift cards. No lobbyist or vendor is solicited or otherwise involved in the Town holiday gift program. Accordingly the Palm Beach County Code of Ethics (the Code) does not prohibit a municipality from giving holiday gifts to all its employees and volunteers.



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*

Ronald E. Harbison
Daniel T. Galo

Executive Director
Alan S. Johnson

August 13, 2012

Mary Miles, Interim Town Clerk
Town of Palm Beach Shores
247 Edwards Lane
Palm Beach Shores, FL 33404

Re: RQO 12-060
Employee/Volunteer Gifts

Dear Ms. Miles,

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

YOU ASKED in your submission dated August 3, 2012, whether the Town of Palm Beach Shores (the Town) may give December holiday gifts to Town employees and volunteers.

IN SUM, the Palm Beach County Code of Ethics (the Code) does not prohibit a municipality from giving holiday gifts to all its employees and volunteers.

THE FACTS as we understand them are as follows:

You are the interim Clerk for the Town of Palm Beach Shores (the Town). It is the intention of the Town to give all employees and volunteer board members holiday gifts purchased from Town funds and approved by the Town Council. The gifts contemplated are, for example, turkeys or \$25 Publix gift cards. No lobbyist or vendor is solicited or otherwise involved in the Town holiday gift program.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

Section 2-444(a)(1) of the Code of Ethics, prohibits Town employees from accepting, directly or indirectly, gifts valued at more than \$100, annually in the aggregate, from any Town vendor or lobbyist. Town advisory board members have the same prohibition only as to vendors or lobbyists who lobby their board or the Town department over which they have authority.¹ There are no vendors or lobbyists giving these gifts and therefore this section does not apply.

Section 2-444(c) prohibits an employee or official from soliciting a gift of any value from a vendor or lobbyist of their municipality or their board or commission, if the gift is for their personal benefit, the benefit of a relative or a fellow employee or board member. This section does not apply to unsolicited gifts given by a public employer.

¹ Art XIII, §2-444(b)(1)

Section 2-444(e) prohibits *any* person or entity from offering, giving or agreeing to give a gift of any value to any municipal official or employee, as well as prohibiting any official or employee from accepting or agreeing to accept a gift of any value, because of the performance or non-performance of an official act or legal duty. (Emphasis added) Here, the contemplated gifts are general in nature and not in exchange for the performance of a specific official act.

Section 2-444(f), Gift reports, requires any official or employee who *receives a gift in excess of one hundred dollars (\$100)* to report that gift in accordance with the disclosure requirements of the Code.

Lastly, §2-443(a) and (b) prohibit using one's official position to obtain a special financial benefit, or to corruptly obtain any special benefit with wrongful intent in a manner inconsistent with the proper performance of official duties. Under the facts and circumstances you have provided, general appreciation gifts of a nominal value, given to all employees and volunteer officials and approved by an elected body, would not be prohibited under this section.

The issue of accepting or soliciting holiday gifts has been addressed in previous advisory opinions.² Unsolicited gifts that are not given because of the performance of a specific public action or legal duty, but rather as an overall expression of appreciation are generally not prohibited by the code, unless the gift is solicited from a vendor or lobbyist or the value exceeds \$100 and is given by a lobbyist or vendor of his or her public employer. If the gift is solicited, great care must be taken to ensure that no vendor or lobbyist is solicited.³

Under the facts and circumstances you have submitted, the gifts are not given by private donors but rather by the municipality itself. Therefore, not only are vendors and lobbyists not involved as donors, but the public purpose is decided in a transparent way at a public meeting of the elected municipal body.⁴ The above listed limitations and prohibitions on accepting gifts generally apply to vendor or lobbyist gifts and are not applicable where the gifts are transparently given by the municipality to all employees and officials.

IN SUMMARY, the Code does not prohibit a municipality from giving gifts to its employees and volunteer board members provided the decision is transparently made or approved by the elected body.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal

² RQO 11-103, RQO 11-110, RQO 11-111, RQO 12-007

³ RQO 11-110

⁴ RQO 11-121 (solicitation for donations for a VIP Tent area at a city function, where the tent area was restricted to city officials, employees and their guests was prohibited where the solicitation was not determined to be for a public purpose by the elected body in a transparent public meeting.)

IX. Proposed Advisory Opinions

a. RQO 12-058 Judith Just

A member of a City Historical Preservation Advisory Board asked whether she may participate and vote in a matter involving a proposed construction in a vacant lot adjacent to her home, where she has filed objections to the proposed construction. Additionally, she asked whether she may attend and participate as an individual homeowner, should she be required to abstain.

Staff submits the following for COE approval: under the facts and circumstances submitted, an advisory board member may not participate and vote on a matter involving proposed construction in a vacant lot adjacent to her home. Furthermore, as a member of the Historical Preservation Advisory Board, she is prohibited from participating in the discussion even in her personal capacity as a homeowner.

b. RQO 12-059 Judith Just

A member of a City Historical Preservation Advisory Board asked whether she may “hire out as a personal consultant to the persons submitting the plans for board review.”

Staff submits the following for COE approval: An advisory board member is prohibited from participating in discussions, presentations or voting on any issue that comes before their board which would provide a special financial benefit to themselves or to their customer or client. In addition, board members are prohibited from soliciting business or otherwise using their official position as member of a City board, for their personal financial benefit or the financial benefit of their business, employer or client. Lastly, depending upon the facts and circumstances, recurring conflicts related to an official’s service on the board may violate Florida Statute and otherwise create an appearance of impropriety.

c. RQO 12-061 Valerie Cintron

A County employee asked whether county water utilities staff may take training from a non-profit organization, the Florida Water & Pollution Control Operators Association (FWPCOA), when two county water utilities superintendents serve on the FWPCOA’s board of directors.

Staff submits the following for COE approval: County employees are prohibited from using their position as water utilities superintendents to give a special financial benefit, not shared with similarly situated training providers, to a non-profit organization of which they are directors. Selecting, organizing and approving Water Utility Department (WUD) staff certification training by FWPCOA would constitute using one’s official position to specially financially benefit that organization.

Therefore, in order for the FWPCOA to continue to provide training for county staff, the superintendent/board members must either resign their positions with the FWPCOA, or remove themselves entirely from any involvement in the selection, organization or approval process regarding all future FWPCOA training sessions.

d. RQO 12-062 Diana Grub Frieser

A City Attorney asked whether the Code of Ethics prohibits employees and officials from soliciting sponsorships from persons or entities who do not sell, lease or lobby the City, where the sponsorship may personally benefit a City official or employee. Additionally, she asked, if such action is prohibited,

whether the City may solicit non-vendor sponsorships provided the City adopts a resolution at a public meeting declaring that a VIP reception attended by City Officials and employees serves a public purpose.

Staff submits the following for COE approval: the Palm Beach County Code of Ethics (the Code) does not prohibit officials and employees from soliciting or accepting gifts from non-vendor local businesses provided the gift is not solicited or accepted as a *quid pro quo* or in exchange for “an official action taken” or “legal duty performed.”

Gifts provided by a non-vendor, non-lobbyist to a state reporting individual must be reported pursuant to all standards and requirements imposed under state law regarding the reporting of gifts. All other officials and employees who are not reporting individuals under state law are required by the Palm Beach County Code of Ethics to report gifts from non-vendors and non-lobbyists in excess of \$100, unless one of several exceptions apply.

e. RQO 12-063 John Randolph

A Town Attorney asked whether a whether an employee of a corporation that owns property within a study area district may serve on an advisory board created specifically to review potential development proposals for that district, and if so, whether he may participate and vote on any ultimate recommendation submitted to the Town. In total, based upon the study area legend prepared by Town staff and submitted to COE staff, there are 15 property owners who may be affected by changes in the study area. Recommendations ultimately could include land use changes affecting density, height restriction and permitted uses within the study area. Changes could have a significant impact on property values, however, it is unknown at this time whether the board will ultimately recommend such changes.

Staff submits the following for COE approval: advisory board members are prohibited from using their official position, participating or voting on an issue that would give a financial benefit to their outside employer, not shared with similarly situated members of the general public. There is no bright line as to whether a contingent financial benefit creates a conflict. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that a member will have a conflict. Similarly, where a gain or loss to an official or his or her employer is not subject to significant contingencies, it may result in a conflict of interest under the Palm Beach County Code of Ethics.

Under the facts and circumstances submitted, where the official’s employer is one of 15 affected landowners and the recommendations of the committee will likely have a direct financial impact on the value of their properties, a conflict exists and the official may not participate and vote on issues related to the study area.

f. RQO 12-064 Paulette Burdick

A Palm Beach County Commissioner asked whether gifts that she does not accept personally as a matter of policy may be passed on to a charitable organization or government department without potentially violating the Palm Beach County Code of Ethics (the Code) gift law limitations and prohibitions.

Staff submits the following for COE approval: transferring a gift to another entity does not alter the fact that the Commissioner would be the original recipient of that gift. Therefore, if the gift is from a vendor,

lobbyist or principal of a lobbyist who lobbies, sells or leases to the county, and the value is in excess of \$100, annually in the aggregate, the Code prohibits an official from accepting such a gift.

However, a Commissioner may accept a gift of any value, from whatever source, if done so on behalf of the County, in their capacity as County Commissioner, for use solely by the County for a public purpose. Therefore, under these circumstances the Commissioner may accept a gift for use by a County department. Additionally, the Code allows an official to pass a gift on to an IRS recognized charitable organization, provided he or she maintain and submit a log in accordance with the transparency provisions of the Code.

Reporting obligations for a County Commissioner are exclusively subject to state law and the reporting individual need only submit a copy of his or her state report to the Palm Beach County COE.

September 7, 2012

Judith Just, P.A.
306 North Lakeside Drive
Lake Worth, FL 33460

Re: RQO 12-058
Conflict of Interest/Land Development

Dear Ms. Just,

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 September 6, 2012.

YOU ASKED in your submission dated July 26, 2012, whether as a member of the Lake Worth Historical Preservation Board (Preservation Board), you may participate and vote in a matter involving a proposed construction in a vacant lot adjacent to your home, where you have filed objections to the proposed construction. Additionally, you asked whether you may attend and participate as an individual homeowner, should you be required to abstain.

IN SUM, under the facts and circumstances you submitted, you may not participate or vote on this matter. While you remain a member of the Preservation Board, you may not personally participate, notwithstanding your views as an individual homeowner.

THE FACTS as we understand them are as follows:

You have recently been appointed to the Lake Worth Historical Resource Preservation Board (Preservation Board) and currently live in a historic neighborhood (National Register) and have a home which is a contributing property built in 1936. Prior to your appointment, you and your husband filed objections to a proposed construction project in a vacant lot adjacent to your home. Your house is a 1,600 square foot, single family, home built in 1936. The proposed new construction is 35 feet in height, 4,000 square feet, and will be built to within 10.5 feet of your southern wall.

The Preservation Board is a decisional or quasi-judicial board that, among other things, decides whether to approve "certificates of appropriateness" involving construction within certain areas of the City of Lake Worth (the City).¹

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

§2-443(c) Disclosure of voting conflicts. 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) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes,

¹ City of Lake Worth Ordinance 2012-17, §23.27.03.03(7)

§112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. 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, as set forth in subsections (a)(1) through (7).

§2-443(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, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;

Essentially, an Official may not use his or her official position to obtain a special financial benefit for themselves or their spouse. This prohibition extends to circumstances whereby voting or participating in a matter would constitute a misuse of office based upon that special financial benefit. The COE has previously opined that financial benefit, in the context of the Palm Beach County Code of Ethics, constitutes economic gain or loss.² The question then becomes whether the issue coming before the Preservation Board will result in a special financial benefit, not shared with similarly situated members of the general public. Under the facts you have submitted, the proposed construction is adjacent to your property. It will consist of a 4,000 square foot structure, 35 feet in height and extend to within 10.5 feet of your property line. Currently, the lot is vacant. You and your husband have filed an objection to the project. Under these circumstances, the economic benefit or loss to you is not remote or speculative in nature so as to remove any special financial benefit.³ Therefore, you are required to abstain and not participate in this issue when the matter comes before your board.

Notwithstanding State of Florida voting conflicts laws, the Palm Beach County Code of Ethics (the Code) is more stringent⁴ and requires that an official not only abstain but also not participate in a matter involving a special financial benefit. While you may attend the meeting, you may not participate by expressing your views before the Preservation Board, even in your personal capacity as a resident of the City. As a member of the Preservation Board, if you do attend, you will need to formally abstain and file a State 8B form as required under the Code. This participation prohibition does not extend to your spouse.

Lastly, an official is prohibited from using his or her official position "to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others." Corruptly means done with a wrongful intent resulting from some act or omission "which is inconsistent with the proper performance of his or her public duties."⁵ The COE will not opine regarding speculative facts and

² RQO 10-013

³ State of Florida CEO Opinion 01-8, June 12, 2001

⁴ See, §112.326, Florida Statutes, allowing local ethics codes to be more stringent than state law

⁵ Art. XIII, §2-443(b)

circumstances; however, voting on an issue “to secure a special privilege, benefit, or exemption” could potentially rise to the level of a violation where there is wrongful intent, even where there is no financial gain or loss. In this instance, you would be voting on your own filed objection.

IN SUMMARY, under the facts and circumstances you submitted, the financial impact to you and your husband stemming from the proposed development is not so speculative or remote as to eliminate a special financial gain or loss. Therefore, as a member of the Preservation Committee, you may not participate or vote on an issue involving a construction project in a vacant lot next door to your 1600 square foot home, which is a contributing property to a nationally registered historic neighborhood. The proposed project consists of a 4,000 square foot structure, 35 feet in height, and 10.5 feet from your property line. You have a pending objection to a certificate of appropriateness, which will be ruled on by your board. Participation includes expressing your views before the Preservation Board in your personal capacity. If you attend the meeting, you may not participate and you will need to formally abstain and file a State form 8B as required by §2-443(c) of the Code.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

September 7, 2012

Judith Just, P.A.
306 North Lakeside Drive
Lake Worth, FL 33460

Re: RQO 12-059
Conflict of Interest/consultant

Dear Ms. Just

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 September 6, 2012.

YOU ASKED in your submission dated July 26, 2012, whether as a member of the Lake Worth Historical Preservation Board (Preservation Board), you may “hire out as a personal consultant to the persons submitting the plans for board review.”

IN SUM, as an official, you are prohibited from participating in discussions, presentations or voting on any issue that comes before your board which would specially financially benefit you or a customer or client of yours. In addition, you may not solicit business or otherwise use your official position as a member of the Lake Worth Historical Preservation Board, for your personal financial benefit or the benefit of your outside business, employer or client. Lastly, depending upon the facts and circumstances, recurring conflicts related to your service on the board may violate Florida Statute and otherwise create an appearance of impropriety.

THE FACTS as we understand them are as follows:

You have recently been appointed to the Lake Worth Historical Resource Preservation Board (Preservation Board). You would like to “hire out as a personal consultant to the persons submitting the plans for board review.” Although you have received an opinion from the State of Florida Commission on Ethics stating that this would constitute a prohibited act under State Law, the City of Lake Worth (the City) attorney has advised you that there is “no conflict because the board member/consultant will not be present during the board discussions and will not vote on the matter.”

The Preservation Board is both an advisory and decisional or quasi-judicial board that, among other things, decides whether to approve “certificates of appropriateness” involving construction within certain areas of the City of Lake Worth (the City).¹

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics (the Code), which took effect on June 1, 2011:

The Code prohibits you from voting or participating in a matter that would financially benefit you, your outside business or employer or a customer or client of yours or your outside business or employer.² If

¹ City of Lake Worth Ordinance 2012-17, §23.27.03.03(7)

² Art. XIII, §2-443(c)

any such item comes before your board you must publicly disclose the nature of your conflict prior to discussion, not participate or vote, and file a State Conflict form 8B with the Preservation Board and with the COE within 15 days. The Code also prohibits you from using your official position in any manner that would financially benefit the above persons or entities.³ Lastly, an official may never seek to obtain any “special privilege, benefit, or exemption”, for themselves or others, if obtained corruptly, that is, with a wrongful intent and in a manner inconsistent with the proper performance of their official duties. While the COE will not opine as to speculative facts and circumstances, you have indicated that you are considering hiring out “as a personal consultant to the persons submitting the plans for board review.” There is a difference, in fact and appearance, in the frequency and manner in which you obtain clients who appear before your board.

The COE has previously opined that a municipal advisory board member may not take part in any discussion or presentation before the board, or vote on an issue regarding a client’s project.⁴ This Code prohibition applies even to municipal licensure boards requiring members to possess a professional registration or credential, such as state-registered architects, landscape architects, engineers, planners or real estate brokers, and where State Statute waives the conflict.⁵ Notwithstanding, the Code does not prohibit a board member from meeting with staff regarding a project provided such contact is in their professional capacity and they do not use their official position to influence the process.⁶ While the Code does not address the issue of recurring conflicts, where the frequency of conflicts becomes significant, such an arrangement creates an appearance of impropriety.⁷

It is worth noting that Florida State Statute expressly prohibits a public officer from having or holding “any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.”⁸ The State prohibition includes holding any employment or 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.⁹ The Preservation Board is a decision-making board and therefore may be considered as having regulatory power over customers or clients seeking “certificates of appropriateness” or other permits. In fact, according to your submitted request, you have received an opinion from the Florida Commission on Ethics informing you that these relationships would be prohibited.

IN SUMMARY, you are prohibited from voting or participating in discussion or presentations before your board on behalf of a customer or client. While you may interact with staff on behalf of a customer or client in your professional capacity, you may not use your official position to influence the process. However, should you represent customers or clients on a frequent basis, albeit limited to staff in your professional capacity, it may create an appearance of impropriety. Notwithstanding, a contractual relationship that creates a continuing or frequently recurring conflict between your private interests and the performance of your public duties may violate State Law. You are encouraged to continue seeking clarification with the State of Florida Commission on Ethics in this regard.

³ Art. XIII, §2-443(a)

⁴ RQO 11-067

⁵ §112.313(7)(b), see RQO 11-076, §112.326, Florida Statutes (allowing local ethics codes to be more stringent)

⁶ RQO 11-067

⁷ RQO 12-027, RQO 11-037, RQO 11-056

⁸ §112.313(7), Florida Statutes

⁹ Id.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law, including continuing or frequently recurring conflicts, 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

PROPOSED

September 13, 2012

Ms. Valerie Cintron, Administrative Secretary
Water Utilities Department
Central Region Operations Center
8100 Forest Hill Blvd.
West Palm Beach, FL 33413-3336

Re: RQO 12-061
Misuse of Office/Non-Profit Organizations

Dear Ms. Cintron,

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 September 12, 2012.

YOU ASKED in your submission dated August 12, 2012 whether county water utilities staff may take training from a non-profit organization, the Florida Water & Pollution Control Operators Association (FWPCOA), when two county water utilities superintendents serve on the FWPCOA's board of directors.

IN SUM, County employees are prohibited from using their position as water utilities superintendents to give a special financial benefit, not shared with similarly situated training providers, to a non-profit organization of which they are directors. Selecting, organizing and approving Water Utility Department (WUD) staff certification training by FWPCOA would constitute using one's official position to specially financially benefit that organization.

Therefore, in order for the FWPCOA to continue to provide training for county staff, the superintendent/board members must either resign their positions with the FWPCOA, or remove themselves entirely from any involvement in the selection, organization or approval process regarding all future FWPCOA training sessions.

THE FACTS as we understand them are as follows:

You are an administrative secretary for Bevin Beaudet and Brian Shields, Director and Deputy Director of the Palm Beach County Water Utilities Department (WUD). WUD provides, in part, water distribution, maintenance and wastewater management for Palm Beach County. The Florida Department of Environmental Protection (FDEP) requires Water Plant and Wastewater Plant Operators to be licensed. Plant Operators must maintain their licenses through a Continuing Education Unit (CEU) re-certification process biannually.

The Water Utilities Department (WUD) staff offers in-house training. These trainings are conducted pursuant to Florida Water & Pollution Control Operators Association (FWPCOA) standards and are approved for CEU credit by the FWPCOA. The FWPCOA is a statewide non-profit organization consisting of members who are engaged in the production, treatment and distribution of drinking water; the collection, treatment and disposal of wastewater; and/or the collection and treatment of storm water. According to their website, the purpose of the FWPCOA is to protect the health of the citizens & preserve natural resources. They accomplish this by advancing the professional status of water and wastewater operators, providing a licensing system and arranging training programs. The association works in cooperation with the Florida Section of the American Water Works Association (FS/AWWA), the Florida Water Environment Association (FWEA), the Florida Department of Environmental Protection (FDEP), the Florida Department of Health (FDH) and the Florida Educational System (FES). FWPCOA's testing certification is recognized by the State of Florida.

FWPCOA is the organization that WUD utilizes to sponsor CEU programs. FWPCOA determines the amount of credit hours each training program is worth, approves course curriculums and instructors, and submits test results

to the state. WUD pays FWPCOA for these services. Many WUD employees are current FWPCOA members and the Association's mission closely represents the skill sets needed by County Employees. Furthermore, several County Employees have been approved by the FWPCOA as educators. In-house training benefits the County by providing convenient, low cost training to staff, and providing experienced employees with the opportunity to develop their training skills as part of their regular duties. From time to time, WUD also uses non-employee FWPCOA certified trainers.

Prior to May 1, 2011, all water distribution certifications held by line and lift station crews and obtained through FWPCOA were voluntary. These certifications were separate from the FDEP plant operator license requirement. No CEU credits were required in order to maintain the voluntary certification. As of May 1, 2011, the FDEP now requires that employees who work on the water distribution lines be licensed in order to work alone or to lead a crew to maintain and repair drinking water lines. This process requires that line and lift station crews must also renew their licenses via CEU credits every two years.

After May 1, 2011, the deadline for all licensed line staff needing to re-certify is April 30, 2013. WUD has approximately 245 staff requiring re-certification credits, which includes plant operators and now, line employees. Since the mandatory license was instituted by FDEP, six "provider" entities throughout the state of Florida have been approved by FDEP to authorize CEU credits. According to the information you provided, none of the other training providers offer the convenience, nor do they offer a program as comprehensive as provided by the FWPCOA. That being said, WUD has hired non-FWPCOA trainers in the past in order to meet peak training demands and if the need arises, may do so in the future.

Two Superintendents of the WUD are unpaid, volunteer directors of the FWPCOA for Region 6, covering Palm Beach and Martin Counties. As Superintendents of the WUD, these County staff members currently are among the several WUD employees who arrange FWPCOA trainings and approve line and plant operator requests for CEU trainings.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

Sec. 2-443(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:

- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

No employee may use their official position to obtain a special financial benefit, not shared with similarly situated entities, for a non-profit organization that they serve as an officer or director.¹ A financial benefit is defined as anything of value.² Here, two WUD superintendents serve on the board of a non-profit organization, the FWPCOA. As superintendents, they are also responsible for arranging and approving WUD employee training in their official capacity. The FWPCOA receives payment from the county for training provided to WUD employees, which constitutes a financial benefit. Moreover, there are 5 alternative organizations that provide similar, FDEP approved training.

¹ 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)

² §2-442 *Financial Benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

This is prohibited by the Code of Ethics. In their official capacity and in contemplation of providing training to over 200 staff members, WUD superintendents with discretion over trainer selection and training approval, may not select the FWPCOA over other similarly situated organizations while serving as directors of the FWPCOA.

However, this does not mean that the county and its employees may not utilize the training services offered by FWPCOA. In order to comply with the Code, the WUD superintendents who serve as FWPCOA board members must do one of two things. If they resign from the board of the FWPCOA, they may continue to arrange and approve training of WUD staff. In the alternative, should they elect to remain on the FWPCOA board, they may not participate in WUD training decisions and must delegate this function to other employees.

IN SUMMARY, based on the facts and circumstances provided, WUD employees who serve as officers or directors of the FWPCOA may not use their official position in any way to give a special financial benefit to the FWPCOA that is not available to similarly situated organizations. As an officer or director of the FWPCOA, using one's public position as a WUD superintendent to select, coordinate, approve training or otherwise financially benefit the FWPCOA in a manner not shared with similarly situated training organizations, would constitute a violation of the misuse of office section of the code.

In order to avoid a violation of the Code, WUD employees would need to either resign as FWPCOA directors or remove themselves entirely from all aspects of the WUD training certification process involving FWPCOA.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

September 12, 2012

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

Re: RQO 12-062
Gift Law/Solicitation

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 September 12, 2012.

YOU ASKED in your submission dated August 27, 2012 whether the Code of Ethics prohibits employees and officials from soliciting sponsorships from persons or entities who do not sell, lease or lobby the City, where the sponsorship may personally benefit a City official or employee. Additionally, you asked, if such action is prohibited, whether the City may solicit non-vendor sponsorships provided the City adopts a resolution at a public meeting declaring that a VIP reception attended by City Officials and employees serves a public purpose.

IN SUM, the Palm Beach County Code of Ethics (the Code) does not prohibit officials and employees from soliciting or accepting gifts from local businesses provided the gift is not solicited or accepted in exchange for "an official action taken" or "legal duty performed."¹

Gifts provided by a non-vendor, non-lobbyist to a state reporting individual must be reported pursuant to all standards and requirements imposed under state law regarding the reporting of gifts.² All other officials and employees who are not reporting individuals under state law are required by the Palm Beach County Code of Ethics to report gifts from non-vendors and non-lobbyists in excess of \$100, unless one of several exceptions apply.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Boca Raton (the City). In conjunction with the Boca Raton Community Redevelopment Agency (CRA), the City hosts an event on the first Friday of every month known as "Friday Night Live" (Event). This reoccurring event is free and open to members of the public.

Seeking to defray costs associated with the Event, the City solicited sponsorship dollars from local businesses. A local automobile dealership responded to the City's solicitation and has offered to contribute \$12,000 to the Event. The dealership does not lobby the City and is not a City vendor. The automobile dealership is based in Broward County and does not have a showroom, dealership or offices located within the City. In exchange for the contribution, the City will acknowledge the dealership as an event sponsor and will allow the dealership to display vehicles and advertise at all Friday Night Live events.

The City has retained a consultant to plan the Event who suggested that a VIP area will enhance the overall experience. Accordingly, in addition to the cash donation provided by the dealership, the city requested that the dealership host a one-time VIP reception including food and beverage service. The VIP reception will not be open to the public. Admission to the VIP area will be at the discretion of the dealership, however, you anticipate that elected officials and City staff members will be invited.

¹ §2-444(e)

² §2-444(f)(1), §112.3148, Florida Statutes, Chapter 34-13, Florida Administrative Code.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

In RQO 11-121, the Commission addressed a similar issue. In that opinion, municipal staff solicited and accepted food and drink donations for a VIP area from vendors of their municipality, exclusively for the benefit of municipal officials, employees and their guests. Section 2-444(c) explicitly prohibits solicitation of goods or services by employees or officials from vendors and lobbyists of their public entity for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.³ The municipality argued that events such as these provide elected officials and staff with an opportunity to develop business opportunities within the city and showcase the city at a city-hosted event. The Commission advised the municipality that under the facts as submitted, the solicitation of city vendors for the benefit of city employees and officials violated the Code. However, §2-444(g)(1)e. specifically exempts gifts solicited or accepted by municipal employees on behalf of their municipality “in performance of their official duties for use solely by the county or municipality for a public purpose.” Accordingly, if a municipality wishes to host events sponsored by vendors for the benefit of public employees, officials and their guests, the governing body must discuss the event prior to the solicitation and declare it a public purpose, providing an opportunity for public comment and discussion.

Unlike the facts and circumstances presented in RQO 11-121, the City is soliciting and accepting a donation from a non-vendor. A vendor is defined as any person or entity who has a pending bid proposal, an offer to sell or lease goods, services or property, or who currently sells or leases goods, services or property to the county or a municipality.⁴ The solicitation of the VIP area was made by a City employee⁵, but the dealership is not a vendor. The dealership does not sell goods or services to the City or have a pending offer to do so. Instead, the City is accepting sponsorship dollars in exchange for advertising and promotion of the dealership. The City is providing services rather than accepting services and accordingly, the prohibitions contained within §2-444(c) do not apply.⁶ The Code of Ethics does not prohibit officials and employees from accepting gifts or donations from businesses, persons or other entities who do not sell, lease, or lobby the government the official or employee serves, but may require reporting of such gifts for transparency purposes.

There are two gifts at issue here: 1) the \$12,000 cash donation to the city, and 2) the VIP event. The \$12,000 donation was provided to the City, not to an individual employee or official, was accepted into the City’s revenue account for use by the City, and accordingly, is not a gift as defined under the Code. At this time, the City has accepted the funding but has not made a declaration regarding public purpose. Whether or not solicitations are made or donations are accepted for a “public purpose” is a policy-making decision outside of the purview of this Commission. However, under the facts you have provided, the Code does not require that the City Commission do so because, even if the benefit is passed through to City officials and employees, the sponsorship donation is being provided by a non-vendor.

That being said, employees or officials who are invited to attend the dealership VIP area must comply with the gift reporting requirements of the Code. Based upon the facts you submitted, while the dealership is providing a VIP area at the direction of the City, it is the dealership, as compared to City staff, who will invite guests to the VIP area. You do not believe that they intend to distribute or sell tickets.

The ethics commission has previously addressed valuation issues and has determined that for purposes of valuation, §112.3148 Florida Statutes, is relevant. The value of a gift provided to several individuals may be calculated on a pro rata basis among all of the invited individuals. State reporting individuals in attendance must

³ §2-444(c) “No county commissioner, member of a local governing body... 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.”

⁴ §2-442 Definitions.

⁵ The term “employee” includes contract employees performing a government function. §2-442 Definitions. *See also*, RQO 11-096.

⁶ RQO 11-022(revised)

comply with the transparency requirements of state law.⁷ All other officials and employees, who are not reporting individuals under state law, must report their attendance at the event if the per person value of the VIP area exceeds \$100.⁸ Lastly, employees and officials are absolutely prohibited from accepting anything of value in exchange for “an official action taken” or “legal duty performed.”⁹

IN SUMMARY, based upon the facts and circumstances submitted, the City is not prohibited from accepting a \$12,000 donation from a local business. The Code of Ethics does not prohibit officials and employees from soliciting or accepting a gift so long as the donor is not a vendor, lobbyist or principal or employer of a lobbyist who sells, leases or lobbies their municipality. However, officials and employees are prohibited from accepting a gift of any value in exchange for “an official action taken” or “legal duty performed.”¹⁰

Gifts provided to a state reporting individual must be reported pursuant to all standards and requirements imposed under state law regarding the reporting of gifts.¹¹ All other officials and employees who are not reporting individuals under state law are required by the Palm Beach County Code of Ethics to report gifts in excess of \$100, received from non-vendors and non-lobbyists, unless one of several exceptions apply.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

⁷ §2-444(f)(1)

⁸ §2-444(f)(2)

⁹ §2-444(e)

¹⁰ §2-444(e)

¹¹ §2-444(f)(1), §112.3148, Florida Statutes, Chapter 34-13, Florida Administrative Code.



August 27, 2012

Alan Johnson, Executive Director
Palm Beach County Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Re: Request for Advisory Opinion

Dear Mr. Johnson:

On behalf of the City of Boca Raton, Florida ("City"), we request an advisory opinion from the Palm Beach County Commission on Ethics ("COE"). The questions relate to solicitations that may be impacted by Section 2-444(c) of the Palm Beach County Code of Ethics ("Code").¹ The factual circumstances in our case relates to a non-vendor, non-lobbyist sponsor of a VIP reception that is not open to the public. We believe Section 2-444(c) of the Code does not restrict solicitation of such a sponsorship because this Code provision is inapplicable when the sponsor is neither a vendor nor a lobbyist.

I. Relevant facts and provisions of the Code of Ethics

a. Sponsorship of City event and VIP reception

On the first Friday of every month, the City has been sponsoring an event in its downtown area known as *Friday Night LIVE!* ("Event"). The Event is open to the public and is partially funded by the City. The City has sought to defray some of the expenses associated with the Event by seeking persons or entities interested in contributing to the Event. An automobile dealership was one such entity that was solicited and agreed to sponsor the Event ("Sponsor"). In this case, the solicitation was made by the City's outside consultant (hired by the City to organize and seek funding sponsors for the Event) ("Consultant").

The only relationship between the City and the Sponsor is the sponsorship of the Event. The Sponsor is neither a vendor, lobbyist, nor a principal or employer of a lobbyist that lobbies the City, nor engaged in lobbying activities (with respect to passage, defeat or modification of an action to be considered by the City). The Sponsor does not have a pending bid proposal before the City, offer or request to sell goods or services to the City, or offer or request to sell or lease

¹ Please note that the issue discussed herein involves an event organized primarily by or on behalf of the Boca Raton Community Redevelopment Agency ("CRA"), a dependent special district not subject to the jurisdiction of the COE. RQO 12-040. However, employees and resources of the City may also be involved in the event and therefore, in an abundance of caution, we are seeking an opinion regarding application of the Code to the actions of the City (and City officials and employees). Accordingly, for purposes hereof, we will refer to the governmental entity impacted by the application of the Code as "City," although the City, its employees and resources may be serving in a support role to the CRA in connection with the event described. This request shall not result in a waiver of any rights of the CRA with respect to the event described herein, or any other CRA matter, nor in any way subject the CRA to the jurisdiction of the COE.

real or personal property to the City. The Sponsor does not currently sell goods or services to the City and does not currently sell or lease real or personal property to the City. Further, the City has entered into a written agreement with the Sponsor whereby the Sponsor will contribute \$12,000 to fund the Event, and the City will acknowledge the Sponsor as the Event contributor on the City's marketing and promotional materials and will allow the Sponsor to display vehicles and advertise at the Event.

In addition to the \$12,000 contribution, there are plans for a VIP reception at the Event also funded by the Sponsor ("VIP reception"). The proposed VIP reception will include food and beverage paid for by the Sponsor. The VIP reception will not be open to the public and will be for the benefit of the Sponsor's invitees, which may include officials and employees of the City. To the extent tickets to the VIP reception have a value in excess of \$100, they will qualify as a gift under Section 2-444 of the Code and will be subject to the gift disclosure requirements.

b. Relevant provisions of Code of Ethics

Section 2-444(c) of the Code provides in relevant part:

No county commissioner, member of a local governing body, mayor or chief executive officer when not a member of the governing body, or 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.

Section 2-442 of the Code provides in relevant part:

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

II. The Code does not prohibit solicitation of a Sponsor for the VIP reception

a. Solicitation of a Sponsor that IS NOT a vendor or lobbyist

In this case, the Sponsor is not a City vendor, lobbyist or principal or employer of a lobbyist that lobbies the City, and therefore Section 2-444(c) of the Code does not prohibit the Consultant from soliciting the Sponsor to host the VIP reception. Although tickets to the VIP reception would qualify as gifts under Section 2-444(g) of the Code² and must be disclosed if the value exceeds \$100, the Code does not prohibit the solicitation of a gift from a person or entity that is

² RQO 11-121

not a City vendor, lobbyist or principal or employer of a lobbyist that lobbies the City.³ Therefore, as noted above, the City is free to solicit (directly or indirectly) any person or entity that is **not** a vendor, lobbyist or principal or employer of a lobbyist that lobbies the City to sponsor the VIP reception, and inclusion of City officials in the VIP reception would not be prohibited. Because the Sponsor is neither a City vendor, nor a lobbyist or principal or employer of a lobbyist that lobbies the City, Section 2-444(c) of the Code does not prohibit the City from soliciting the Sponsor to host the VIP reception. Finally, the solicitation by the City does not violate Section 2-444(e) of the Code because there is no *quid pro quo* or other benefit given for the past, present or future performance of an official act or legal duty in exchange for hosting the VIP reception.

b. Solicitation of a Sponsor that IS a vendor or lobbyist

Assuming, *arguendo*, that Section 2-444(c) of the Code does apply to the solicitation of the Sponsor as discussed above (which it does not), the prohibition on solicitation set forth in Section 2-444(c) of the Code can be resolved as specified by the COE in RQO 11-121. That opinion concludes that in the event a City adopts a resolution declaring solicitation for an event serves a public purpose (in this case the VIP reception), then the benefit received no longer constitutes a gift under the Code. Specifically, if the City adopts a resolution at a public meeting declaring that the VIP reception, as planned, serves a public purpose, then the City would not be prohibited from soliciting (directly or indirectly) for sponsorships from either City vendors or lobbyists, or non-vendors and non-lobbyists, and City officials and employees could attend the reception. Pursuant to the analysis set forth by the COE in RQO 11-121, the issue of public purpose may be determined by adoption of a resolution at a public meeting by the City. Upon adoption of such resolution, the exception to the gift law found in Section 2-444(g)(1)e of the Code would apply and tickets to the VIP reception would no longer be considered gifts. Consequently, solicitation of the VIP reception from a person or entity that was a City vendor or lobbyist would no longer be prohibited and the gift disclosure requirements would no longer apply.

c. Solicitation made directly or indirectly

The analysis and conclusions under subsections a. and b., above are the same whether the solicitation is made by a City official or employee, or by a consultant hired on behalf of the City.

III. Summary of analysis

(1) Assuming no *quid pro quo*, solicitation of a gift from a non-vendor or non-lobbyist is not prohibited under Section 2-444(c) of the Code and must be disclosed if the value of the gift exceeds \$100.

(2) Assuming no *quid pro quo*, solicitation of a gift from a vendor or lobbyist is not prohibited under Section 2-444(c) and the gift disclosure requirements would not apply if the City adopts a resolution at a public meeting declaring that the purpose of the solicitation serves a public purpose.

³ RQO 12-009, RQO 12-055, Section 2-444(c) of the Code.

(3) Assuming no *quid pro quo*, solicitation of a gift from a vendor or lobbyist (or non-vendor or non-lobbyist) is not prohibited under Section 2-444(c) and the gift disclosure requirements would not apply if the VIP reception is open to the public.

IV. Request for Opinion

Based on the foregoing, the City requests an opinion from the Palm Beach County Commission on Ethics regarding the following questions:

- (1) Does Section 2-444(c) of the Code restrict the City from soliciting sponsorships directly (through its employees or public officials) or indirectly (through an outside consultant hired by the City) from persons or entities, where the sponsorship is for the personal benefit of a City official or employee (including sponsorship of a VIP reception that is not open to the public), and where the sponsor is **not** a City vendor, lobbyist or principal or employer of a lobbyist that lobbies the City?
- (2) If Section 2-444(c) of the Code does apply to the solicitation (or as an alternative approach even if Section 2-444(c) of the Code does not apply), would the City be permitted to solicit for sponsorship of the VIP reception from either vendors and lobbyists or non-vendors and non-lobbyists if the City adopts a resolution at a public meeting declaring that the VIP reception, as planned and not open to the public, serves a public purpose?

Based on earlier discussions, I am hereby requesting that a copy of this letter be included in the record and provided to each member of the Commission on Ethics for their review in connection with this matter. Thank you for your assistance in this matter. Please feel free to contact me if you require additional information regarding this request.

Sincerely,



Diana Grub Frieser
City Attorney

DGF/jpk
Enclosure

cc: Leif J. Ahnell, C.P.A., C.G.F.O., City Manager
George S. Brown, Deputy City Manager
Joni Hamilton, Senior Assistant City Attorney
Joshua P. Koehler, Assistant City Attorney

September 13, 2012

John C. Randolph, Esquire
Town of Palm Beach Town Attorney
Jones, Foster, Johnston & Stubbs, P.A.
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

Re: RQO 12-063
Voting Conflicts

Dear Mr. Randolph,

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 September 12, 2012.

YOU ASKED in your submission dated August 28, 2012 whether an employee of a corporation that owns property within a study area may serve on an advisory board created to review potential development proposals for the study area and if so, whether he may participate and vote on any ultimate recommendation submitted to the Town.

IN SUM, advisory board members are prohibited from using their official position, participating or voting on an issue that would give a financial benefit to their outside employer, not shared with similarly situated members of the general public. There is no bright line as to whether a contingent financial benefit creates a conflict. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that a member will have a conflict. Similarly, where a gain or loss to an official or his or her employer is not subject to significant contingencies, it may result in a conflict of interest under the Palm Beach County Code of Ethics.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Palm Beach (Town). The Town Council (Council) recently appointed an ad hoc committee to consider the future development of a five acre commercial area on Royal Poinciana Way (the study area). The Royal Poinciana Way Study Committee (RPWSC) has 7 members. The Chair was appointed by the Mayor, each Councilperson appointed an RPWSC member and the final member was appointed by the Chair of the Town Planning and Zoning Commission. Members were selected from town residents and businesses who have expressed a special interest in the area or who, based upon special knowledge or interest, may lend a particular contribution to the RPWSC. The committee does not have authority to make changes to the zoning code, but can make recommendations to the Town Council. The Town did not provide the RPWSC with much direction regarding future development of the study area. Accordingly, the RPWSC along with Town staff have discussed traditional planning mechanisms such as potential increases in density, height, setbacks, etc. to the area. The RPWSC has heard various presentations and each member of RPWSC expressed individual opinions in regard to potential development in the area. At some point in time in the future, the RPWSC will vote on a recommendation to the Town Council.

One of the 7 appointees is the president/CEO of Breakers PB, Inc. (Breakers), Paul Leone. The Breakers owns an office building located within the study area. In total, based upon the study area legend prepared by

Town staff and submitted to COE staff, there are 15 property owners who may be affected by changes in the study area. In addition, the Breakers owns property on the south side of Royal Poinciana Way as well as resort and golf club properties not included in the study area in the Town. As mentioned above, the RPWSC has heard presentations detailing potential development options and has discussed these presentations at their meetings. Recommendations ultimately could include land use changes affecting density, height restriction and permitted uses within the study area. Changes could have a significant impact on property values, however, it is unknown at this time whether the recommendations will have a financial impact on the area. The RPWSC's next meeting is on September 14, 2012. The question has arisen as to 1) whether it is a conflict of interest for an employee of the Breakers to sit on the RPWSC and/or 2) to vote on any ultimate recommendation which may be made to the Town Council in an advisory capacity.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

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;
 - (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;

Section 2-443(a) prohibits advisory board members from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves or their employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an advisory board member to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to themselves or their employer.

Under state statute, to constitute a prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.¹ Where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.² Similarly, for a financial benefit to be "special", the benefit must inure uniquely to the voting member, rather than benefiting the Town as a whole. There is no bright line in determining the number of individuals who would need to be affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him to gain more than the other members of the class. However, where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.³

Each advisory opinion is based upon a unique set of facts and circumstances. Whether a matter rises to the level of a voting conflict will be based upon the facts and circumstances presented to the COE. For example, the COE has previously opined that a municipal advisory board member was prohibited from presenting his

¹ George v. City of Cocoa, Florida, 78 F.3d 494 (1996).

² CEO 05-15, CEO 91-61, CEO 12-19

³ CEO 77-129

client's project to his advisory board, participating in discussions regarding the project or voting on a matter financially benefiting his customer or client.⁴ Under the facts presented the gain to the board member's customer or client was direct and immediate.

First, Mr. Leone's employer is one of 15 property owners that would be subject to any changes recommended by the RPWSC. The number of persons or entities directly affected by potential changes is too small a class to be considered similarly situated to members of the general public.

Second, the RPWSC was established to provide input and recommendations to the Town concerning a proposed ordinance that would, if adopted, make changes to the land use code in the study area. For example, should the Committee recommend a land use change resulting in an increase in density and that recommendation is adopted by the Town Council, the value of the Breakers property will be increased, regardless of whether or not the current owner takes advantage of the changes.

The sole purpose of the RPWSC is to consider changes to the study area containing these 15 properties. Therefore, any discussion, recommendation or vote of the Committee would present a conflict of interest for Mr. Leone. Because the Code prohibits participation as well as voting on the matter, the COE is of the opinion that Mr. Leone should resign from the Committee. That being said, the Code does not prohibit business owners, their employees or citizens with a vested financial interest in development of their property from providing meaningful and valuable comment to the Committee or Town Council provided they do not do so while serving as an official in an appointed advisory capacity.

IN SUMMARY, Mr. Leone may not use his official position, including participation and voting on issues before the RPWSC, affecting the financial interests of his employer, where his employer is one of 15 landowning entities within an affected study area. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the RPWSC process and the absence of significant contingencies to obtain that gain if changes are approved, the potential financial benefit to Mr. Leone's employer is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

cc: William O. Cooley

⁴ RQO 11-067

September 13, 2012

Paulette Burdick, Commissioner
Palm Beach County Commissioner – District 2
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 12-064
Gift Law/Public Purpose

Dear Commissioner Burdick,

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 September 12, 2012.

YOU ASKED in your email submission dated September 5, 2012, whether gifts that you do not accept personally as a matter of policy may be passed on to a charitable organization or government department without potentially violating the Palm Beach County Code of Ethics (the Code) gift law limitations and prohibitions.

IN SUM, transferring a gift to another entity does not alter the fact that you are the original recipient of that gift. Therefore, if the gift is from a vendor, lobbyist or principal of a lobbyist who lobbies, sells or leases to the county, and the value is in excess of \$100, annually in the aggregate, you are prohibited from accepting such a gift. However, you may accept a gift of any value, from whatever source, if done so on behalf of the county, in your capacity as County Commissioner, for use solely by the county for a public purpose. If you were to pass the gift on to a charitable organization, you must maintain and submit a log in accordance with the transparency provisions of the Code. Under these circumstances, accepting and passing a gift on to a county department or to a 501(c)3 non-profit organization would not be prohibited.

THE FACTS as we understand them are as follows:

As a Palm Beach County Commissioner you have a policy of not accepting gifts, regardless of value. When you do receive a gift, you reimburse the person or organization which gave the gift. While you have found this to be somewhat awkward for both parties, you have chosen to adhere to a zero gift policy so as not to inadvertently violate the gift law sections of the Palm Beach County Code of Ethics (the Code).

You have been contemplating passing these gifts on to 501(c)3 charities or county government departments. In such a scenario you would keep a log of the gifts, their source, and to whom they were given.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

Section 2-444(a)(1) prohibits a County Commissioner from knowingly accepting, directly or indirectly, any gift with a value of greater than \$100, annually in the aggregate, from any person or business entity

that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the county. In order to violate the Code, knowledge of the status of the donor must be either actual or constructive.¹ Once you accept a gift, it is considered to be received by you, notwithstanding your passing the gift on to a third party. The code does not prohibit your accepting gifts under \$100, annually in the aggregate, from vendors or lobbyists, nor is there any limitation on accepting gifts from non-vendors or lobbyists, provided the gift is not a *quid pro quo* for official action, or otherwise given in exchange for the past, present or future performance of an official act or legal duty.²

The Code contains an exception to the §2-444(a) prohibition against soliciting otherwise prohibited gifts from vendors, lobbyists and their principals, where the donation is solicited for a non-profit charitable organization, as defined under the Internal Revenue Code, provided the donor has no pending application for approval or award of any nature before the county and provided a log is maintained and submitted to the COE including the following information; name of the charitable organization, name of the donor contacted, event for which the funds were solicited (if applicable) and the amount of the funds solicited or pledged if known.³ While this section applies to solicitations for charity, the COE is of the opinion that if you maintain and submit a log with the required information to the COE, that there is no functional difference with regard to accepting and donating such a gift to charity in a transparent manner and so long as there is no *quid pro quo* or *other special consideration* given the donor.

With regard to passing on these gifts to a county department, §2-444(g)e. exempts gifts solicited or accepted by county officials on behalf of the county in performance of their official duties for use solely by the county for a public purpose.⁴ Under these facts and circumstances, if you specifically accept gifts given to you in your capacity as County Commissioner, on behalf of the county, for use by a county department for a public purpose, the gifts would not be prohibited under the Code, even if the donor is a county vendor, lobbyist or principal or employer of a lobbyist.

Lastly, as a County Commissioner you are an official identified by state law as a reporting individual.⁵ Therefore, you are required to report gifts pursuant to state law.⁶ The Code requires only that you submit a copy of any such report to the COE. The COE cannot opine as to whether or not a pass through gift accepted on behalf of the County would be a reportable gift under state law, notwithstanding the fact that it may not be reportable for a non state reporting individual under the Palm Beach County Code of Ethics.

IN SUMMARY, the Code does not prohibit your accepting a gift and passing it along to a charitable organization unless the gift is from a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the county and is valued in excess of \$100, annually in the aggregate. Notwithstanding, if a transparent log is maintained in accordance with the Code, donations to IRS recognized charitable organizations are exempted from this prohibition. If the gift is accepted by you as a County Commissioner, on behalf of the county, for use by a county department for a public purpose, you are not prohibited from accepting and passing on such a gift regardless of value.

¹ There is no bright line regarding knowledge of the status of a donor as actual or constructive knowledge can only be determined by the facts and circumstances presented. The status of the donor by itself is not sufficient to establish knowledge. RQO 11-116, Commission on Ethics v. Barker, 677 So2d 254 (Fla. 1996)

² Art. XIII, §2-444(e), §2-443(a) and (b)

³ Art. XIII, §2-444(h)

⁴ RQO 10-027, RQO 11-083, RQO 11-019, RQO 12-044

⁵ §112.3148, Florida Statutes

⁶ Art. XIII, §2-444(f)(1)

No gift may be solicited or accepted as a *quid pro quo* for official action, special consideration or in exchange for the past, present or future performance of an official act or legal duty.

As a state reporting individual, you are required to comply with state law and submit a copy to the COE of any report submitted in this manner.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal