



Agenda

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

Executive Session from 1:45pm to 3:15pm Regular Agenda will begin at 3:30pm

Palm Beach County

Commission on Ethics

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Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Ronald E. Harbison

Daniel T. Galo

Patricia L. Archer

Executive Director

Alan S. Johnson

Executive Assistant

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 1, 2012
- V. Executive Sessions
 - a. C12-013
 - b. C12-014
 - c. C12-011
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-073
 - b. RQO 12-075
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 12-072
 - b. RQO 12-074
 - c. RQO 12-076
 - d. RQO 12-078
 - e. RQO 12-079
- IX. Memoranda of Understanding
 - a. Lake Worth CRA
 - b. Delray Beach CRA
 - c. Delray Beach Housing Authority
- 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**

NOVEMBER 1, 2012

**THURSDAY
1:38 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
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA

STAFF:

Mark E. Bannon, Commission on Ethics (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:

Dominique Marseille, Minutes Clerk, Clerk & Comptroller's Office

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

a. September 12, 2012

Commissioner Farach stated that a typographical error existed regarding the date for agenda item IV.a., and that it should be September 12, 2012.

MOTION to approve the September 12, 2012, minutes. Motion by Patricia Archer seconded by Robin Fiore, and carried 5-0.

b. October 4, 2012

MOTION to approve the October 4, 2012, minutes. Motion by Patricia Archer seconded by Robin Fiore, and carried 5-0.

RECESS

At 1:41 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:51 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, Galo, and Harbison present.

V. EXECUTIVE SESSION (REPORT)

V.a. C12-012

Commissioner Fiore read the following public report finding no probable cause and final order of dismissal:

Complainant, Juan Gando, filed the above-referenced complaint on September 27, 2012, alleging a possible ethics violation involving Respondent, John J. Greene, Village of Wellington (the Village) Councilman.

The complaint alleges that Councilman Greene misused his position and authority, in part, by using his official position to financially benefit a personal friend whose business interests appear to be in opposition to an application before the Village Council.

V. – CONTINUED

V.a. – CONTINUED

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use his official position to corruptly secure or attempt to secure a benefit for himself or others. Nor may an official accept a gift of any value because of the performance of an official act or legal duty.

On October 25, 2012, the complaint was determined by staff to be legally sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, in addition to information obtained in an unrelated complaint, C12-003 and advisory opinions, RQO 12-045 and RQO 12-065, were presented to the Commission on Ethics on November 1, 2012. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause, recommendation of staff, as well as oral statements of the respondent and the advocate. At the conclusion of the hearing the Commission on Ethics found no probable cause exists, and the complaint was dismissed.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, John J. Greene, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on November 1, 2012. Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

VI. STATUS CHECK RE: SETTLEMENT/FINAL HEARING C12-003

Mr. Johnson requested that Pro Bono advocate Hardee Bass, Esq., and Respondent J. Jerome Taylor approach the board.

Mr. Bass said that:

- The COE had found probable cause on a five-count complaint against Mr. Taylor.
- He and Mr. Taylor negotiated the settlement for C12-003.
- Mr. Taylor admitted to the allegations contained in the complaint for counts 2, 4, and 5. Counts 1 and 3 of the complaint were dismissed.
- Mr. Taylor's fines totaled \$500.
- A letter of reprimand would be issued to Mr. Taylor, and he was required to pay \$500 in restitution to the Riviera Beach Housing Authority (RBHA).

Commissioner Farach requested that Mr. Bass give a brief factual basis for the stipulated settlement to Counts 2, 4, and 5.

Mr. Bass said that:

- In Count 2, on or around February 13, 2012, Mr. Taylor requested a reimbursement check from the RBHA. As a member of the RBHA, Mr. Taylor voted on finalizing that check. This was contrary to Palm Beach County's Code of Ethics (Code) and the disclosure of voting conflicts count.
- In Count 5, on or around March 16, 2012, the RBHA gave Mr. Taylor a check for \$1000 at the March 16, 2012, RBHA meeting, and he participated in the vote that ratified the payment to him.
- In Count 4, on or around March 16, 2012, after Mr. Taylor received a \$1000 check, he had someone cash the check under the guise of an individual doing pest-control services for him. Mr. Taylor allowed the individual to retain \$500 of the check, which violated the Code.

VI. – CONTINUED

Commissioner Farach explained to Mr. Taylor that he could bring an attorney for representation throughout the proceedings.

Mr. Taylor said that he would proceed without an attorney present, and that he agreed with the settlement's terms and conditions.

Commissioner Farach thanked Mr. Taylor for working with Mr. Bass to resolve the matter.

(CLERK'S NOTE: A question and answer session between Commissioner Galo and Mr. Taylor ensued at this time.)

MOTION to accept the negotiated settlement for C12-003. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-1. Daniel Galo opposed.

Commissioner Farach said that payment collections from Mr. Taylor was not the COE's decision, since payments would not be made through the COE.

Mr. Johnson said that payments would be negotiated with the RBHA and that Mr. Taylor was obligated to pay \$500 to the RBHA and a \$500 fine to the County. He said that the repayment obligation could be enforced in circuit court; however, Mr. Taylor could make arrangements for a payment plan with the RBHA, if they would allow it.do so.

Commissioner Archer said that she supported a repayment plan for Mr. Taylor.

Mr. Johnson said that:

- The COE could discuss with Mr. Taylor how much he could pay, and have him contact the RBHA.
- The COE was not a probation agency that monitored payment plans.
 - Mr. Taylor's fines would come to the COE's office, but would be addressed to the County.
 - The COE could discuss a payment plan regarding fines owed to the County.

VI. – CONTINUED

Commissioner Fiore suggested that the COE discuss creating a payment structure for Mr. Taylor.

Commissioner Harbison said that he supported any suggestions for Mr. Taylor's fine payments.

Commissioner Fiore read the following public report and final order for C12-003:

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, Chairman of the City of Riviera Beach Housing Authority (RBHA).

The complaint alleges five Code of Ethics violations involving the use of RBHA funds.

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 RBHA, 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 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, Section 2-443(c), *Disclosure of voting conflicts*, of the Palm Beach County Code of Ethics.

VI. – CONTINUED

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 pest control 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*, 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 RBHA check, purportedly designated for pest control services, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, Palm Beach County Code of Ethics.

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, Section 2-443(c), *Disclosure of voting conflicts*, 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 his or her official position to take any action, or to influence others to take any action, in a manner in 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 Section 2-443(a)(1-7), including the public official, an outside business or employer or a customer or client of their outside business or employer.

VI. – CONTINUED

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, or compensating or receiving compensation for, any benefit resulting from some act or a 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, Section 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 Section 112.3143, Florida Statutes, and submit a copy to the Commission on Ethics.

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.

(CLERK’S NOTE: Commissioner Archer left the meeting.)

On August 2, 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 as to the following alleged violations.

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

VI. – CONTINUED

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)

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

On November 1, 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 two, four, and five of the complaint that he violated Sections 2-443(b) and (c) of the Palm Beach County Code of Ethics. Respondent agrees to accept a letter of reprimand and to pay a total of five hundred (\$500) dollars in fines and an additional five hundred (\$500) dollars in restitution to the Riviera Beach Housing Authority. Counts one and three are dismissed. Pursuant to the Commission on Ethics Ordinance section 2-260.1, *Public hearing procedures*, the Commission finds that the violation was intentional. As to Count two, the Commission assesses a fine of Two Hundred (\$200) Dollars; as to count four, the Commission assesses a fine of two hundred (\$200) dollars; as to count five, the Commission assesses a fine of one hundred (\$100) dollars; and the Respondent has been ordered to pay restitution in the amount of five hundred (\$500) and has been issued a letter of reprimand.

Therefore, it is:

VI. – CONTINUED

Ordered and adjudged that this matter is concluded upon acceptance of the letter of reprimand and payment of the aforementioned five hundred dollar (\$500) fine and restitution in the amount of five hundred dollars (\$500).

Done and ordered by the Palm Beach County Commission on Ethics in public session on this 1st day of November, 2012. Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

Mr. Johnson said that a COE vote was needed to determine whether the violations were intentional or unintentional.

MOTION to accept a finding that the violations were intentional. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0. Patricia Archer absent.

Commissioner Farach said the official final order would be changed to reflect that Mr. Taylor's actions were intentional.

(CLERK'S NOTE: Commissioner Archer joined the meeting.)

Commissioner Fiore read the letter of reprimand regarding C12-003 as follows:

November 1, 2012, Mr. J. Jerome Taylor, 1906 West 23rd Street, Riviera Beach, FL 33404.

Dear Mr. Taylor,

When the Commission on Ethics met in executive session on August 2, 2012, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically Sections 2-443(a), (b), and (c). On November 1, 2012, you admitted to violating Section 2-443(b) of the Palm Beach County Code of Ethics entitled, "Corrupt misuse of official position," and Section 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.

VI. – CONTINUED

Chapter 8, Article XIII, Section 2-443(b) Corrupt misuse of official position. An official or employee shall not use 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, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or an employee which is inconsistent with the proper performance of his or her public duties.

Chapter 8, Article XII, 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 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 Form 8B pursuant to the requirements of Florida Statutes, Section 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).

(THIS SPACE LEFT BLANK INTENTIONALLY)

VI. – CONTINUED

The facts are as follows:

On February 13, 2012, as an appointed Commissioner of the Riviera Beach Housing Authority (RBHA), you participated and voted in an approval of a financial statement listing a payment of \$950 to you for extermination services provided to four (4) Neighborhood Stabilization Program (NSP) grant funded homes. The financial statement ratified a payment to you via RBHA check dated January 20, 2012. No service provider invoices or other verification was provided to the RBHA regarding these expenses. You had previously submitted an invoice for \$950 to RBHA for services provided at the NSP homes. The invoice indicated external work. While you subsequently provided the COE with an extermination product receipt for under \$100, RBHA records did not substantiate any of your reimbursed expenses. You submitted an additional invoice to the COE on October 11, 2012, purportedly for internal work done on the NSP homes in June, 2011; however, this invoice was also never submitted to RBHA. In June/July, 2011, the RBHA had over \$49,000 in its operating budget.

On March 16, 2012, you submitted a \$1000 invoice for exterminating services provided by a Carlton Darville, for the RBHA offices located at 2014 West 7th Court in Riviera Beach. The submitted invoice contained false information, including fictitious contact information for Mr. Darville, the exterminator, and a false commercial exterminator's license number. When you received the RBHA check in March, 2012, you met with Mr. Darville, Jr. who cashed the RBHA check in your presence and returned \$500 to you in cash. While you have claimed in your response that the money received by you was paid to mow the lawn around the RBHA building and was given to a person named "Slim," at no time was this claim substantiated. Subsequently on April 10, 2012, you participated and voted on the financial statement containing the \$1000 payment to Mr. Darville, Jr., which resulted in a financial benefit to you.

VI. – CONTINUED

While the Commission is mindful of the serious health issues that caused you to be hospitalized for a significant period of time in September, 2011, you had sufficient time before and after your illness to submit the appropriate invoices for reimbursement of expenses incurred in July, 2012. However, due to the later submission of these invoices, the COE has agreed to dismiss the allegation of misuse of office for financial gain. However, of greater significance, the entire March, 2012 transaction occurred months after your release from the hospital and involved you obtaining a portion of the proceeds issued to the unlicensed exterminator. Lastly, in January and March, you submitted the invoices to RBHA containing false or misleading information. These actions constitute a corrupt misuse of your position.

As an appointed official, you are prohibited from participating or voting on any issue that will result in a special financial benefit to you. Even if you were entitled to reimbursement, you cannot participate in such a discussion and vote. These voting conflicts are compounded by the fact that you submitted false or incomplete invoices to the RBHA, and at least in the March, 2012 occurrence, corruptly retained RBHA money from the transaction.

Your actions constituted three 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 that 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.

VI. – CONTINUED

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

(CLERK'S NOTE: The clerk added the language as printed in the letter of reprimand.)

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. RQO 12-069

Staff Counsel Megan Rogers Esq., said that:

- A question was asked whether a County Vendor, Wells Fargo Bank (WF), and several municipalities could continue to provide complimentary lunch and financial action strategy plans to County and municipal employees, officials, and advisory board members, while providing similar plans to members of the public.
- Potential WF clients were taken to lunch and provided with pre-retirement plans and information on ways to meet retirement goals.
- A municipal employee's financial advisor was asked whether WF's complimentary lunch was a gift and how it would be valued.
- The matter met the gift law exception that a publicly advertised offer provided by a vendor to the County, municipal staff, and officials are made available on the same terms to the public.
- Lunch was provided to all preretirement individuals in WF's client base.
- Paid lists of names from providers of pensions, 401K, and various retirement plans were used to uniformly contact individuals.

VII. – CONTINUED

VII.a. – CONTINUED

MOTION to approve processed advisory opinion RQO 12-069. Motion by Daniel Galo, seconded by Ronald Harbison, and carried 5-0.

VIII. ITEMS PULLED FROM THE CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 12-070

Ms. Rogers said that:

- A municipal employee asked whether he could continue working as a certified urban planner to develop a city transit project where he co-owned a property within the development area.
- City of Boynton Beach (Boynton) would be making changes to the zoning requirements of the area.
- Over 500 properties were located within the development site.
- If the employee owned the entire building where he lived, his ownership interest would be 0.2 percent.
- Staff concluded that the economic benefit or loss that would affect the class was large enough so as to remove a prohibited, or special financial benefit unique to him, and would allow him to continue working in his official capacity to develop the project for Boynton.

Commissioner Fiore said that the situation should be analyzed by the number of people owning properties in the area.

Ms. Rogers said that the opinion letter spoke to the general principal that he could not use his official position to create a special financial benefit for himself. She said that the benefit was not special due to how the project was established.

IX. – CONTINUED

IX.a. – CONTINUED

Commissioner Fiore inquired whether the COE should say that no basis existed to determine whether the employee was acting inappropriately to benefit himself since Mr. Johnson could conduct the project in different ways.

Mr. Johnson said that if a special financial benefit existed, than one of the 500 property owners would benefit more than the rest. He said that the COE could only give an opinion based on the facts and circumstances when no unique benefit existed.

Commissioner Fiore said that a problem existed with the paragraph that began, Under the facts, since it referenced numbers, and the COE was unaware of what the project's amenities would be.

Commissioner Harbison said that based on the facts, no other financial benefit existed to the employee outside of being an area resident.

Ms. Rogers recommended adding a footnote to the opinion letter stating that at this point, it appeared that the employee's ownership interest was no more than 0.2 percent; however, should it become a special financial benefit, refer to the relevant section in the advisory opinion.

Commissioner Fiore suggested that the letter should include a statement saying while this was a numerical analysis, there may be other basis to determine what a special benefit was.

Commissioner Galo said that, regarding the project, decisions were not being made to benefit the employee as a resident, but that the decisions were made in accordance to the employee's duties.

Commissioner Farach suggested adding a sentence to address Commissioner Fiore's and Galo's concerns.

Mr. Johnson suggested that the footnote suggested by Ms. Rogers be placed on the second page at the end of the paragraph beginning with the words, Section 2-443.

IX. – CONTINUED

IX.a. – CONTINUED

Commissioner Fiore suggested adding words to the last sentence in the paragraph that began, Under the facts, so that it would read: Under these circumstances, the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit based on numbers; however, it might be the case that a special benefit is available to you in some other fashion and that to would be a matter of fact.

Mr. Johnson suggested that adding the following sentence at the end of the paragraph that began, Under the facts, after footnote three: If during the development of the project, the facts and circumstances change to reduce the size of the affected class so as to give you a unique benefit, then it may become necessary for you to resubmit your request for an opinion, this opinion may not be applicable.

Commissioner Fiore said that the letter's additions would protect the COE from setting a future opinion precedent.

Mr. Johnson reread the added language: If during the development of this project, the facts and circumstances change to reduce the size of the affected class to give you a unique benefit, this opinion would not be applicable.

Commissioner Farach suggested changing the words, "unique benefit" to "special benefit."

Mr. Johnson said that footnote three would be placed at the end of the additional sentence.

MOTION to approve proposed advisory opinion letter RQO 12-070 as amended to include the changes as discussed. Motion by Daniel Galo, seconded by Patricia Archer, and carried 5-0.

IX.b. RQO 12-071

Ms. Rogers said that:

- A municipal advisory board member asked whether he was prohibited from voting on a matter, regarding a new development within a subdivision of his property owner's association (POA).
- The POA managed 40 individual homeowners associations (HOA) within its general structure.
- The board member owned a lot over one mile away from the proposed development.
- Staff had stated that:
 - Public officials were prohibited from using their official positions to give themselves a special financial benefit not shared with similar situated members of the general public.
 - In using a numerical analysis, the board member was one of 1,450 current property owners.
 - The proposed development did not directly affect the board member's HOA, nor did the member's property share frontages, road access, or sit adjacent to the proposed development; therefore, he was not prohibited from voting on the matter since no financial benefit existed.

MOTION to approve proposed advisory opinion letter RQO 12-071. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.

X. REVISIONS TO RULES OF PROCEDURE

(CLERK'S NOTE: Commissioner Galo left the meeting.)

RECESS

At 4:03 p.m., the chair declared the meeting recessed.

RECONVENE

At 4:18 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, Galo, and Harbison present.

X.a. Section 4.6.1 – Referral to Other Authorities

Mr. Johnson said that:

- The item was tabled in October 2012.
- Section 2-260.2 of the COE ordinance entitled *Notification and Referral to Other Authorities*, and it stated that: As provided for by ordinance within its jurisdiction, the COE shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate. The state attorney or other appropriate agency could decline prosecution or enforcement of any matter referred by the COE, and return the matter back to the COE.
- No corresponding Rule of Procedure existed that described the referral process.
- A criminal investigation and a COE investigation were exempt from public record.
- A law enforcement referral did not affect a COE complaint going forward unless a written request was made by the state attorney or the United States Attorney to stay the COE proceedings pursuant to section 2-260(h).
- Staff proposed that three sections be added to the Rules of Procedure.
 - Section 4.6.1. Referral to Other Authorities for Prosecution, stated that: the Commission on Ethics or an executive director on behalf of the commission shall refer a matter to the state attorney or other appropriate official or agency having authority to initiate prosecution when deemed appropriate.
 - Section 4.6.2., A Notice to Commission of Referrals, stated that: The Commission on Ethics shall be notified of a referral made by the executive director pursuant to rule 4.6.1.

X. – CONTINUED

X.a. – CONTINUED

- Section 4.6.3., Manner of Notice to Commission/Public Records Exemption, stated that: The COE intake manager shall generate a separate case number for any referral by the executive director to the state attorney or other appropriate official or agency having authority to initiate prosecution. The referral shall be scheduled for review in executive session at the next regularly scheduled meeting of the commission. Unless disapproved by a majority of the commission, the executive session shall remain unpublished and exempt from public records disclosure until such time as the prosecuting authority declines or completes its investigation and notifies the commission that the matter is no longer exempt from disclosure pursuant to chapter 119, Florida Statutes.
- Staff would create a false case number and go into the executive session with the notification being exempt from public disclosure until it became a public record under the investigation, or returned to the COE with a declination of prosecution.
- If a situation required immediate notification, it would be brought back at the next regularly scheduled meeting.
- Cases discussed in executive session would eventually become public record once they were no longer considered exempt.
- A referral would receive a certain designation and would be attached to the COE's internal records with the referencing complaint.

MOTION to accept staff's recommendation to amend the Rules of Procedure. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 5-0.

Mr. Johnson said that the complaint page on the COE's website was redesigned to be more user friendly, and that published public executive sessions and complaints could be searched online.

XI. COMMUNITY OUTREACH

Ms. Rogers said that:

- She had been tweeting updates during the meeting.
- The COE's Facebook page featured articles, events in the community, meeting reminders, and a Did-You-Know segment regarding the Code of Ethics.
- Advertising the COE on Facebook was being researched by staff.
- Staff requested that the COE members review their calendars to accommodate a March 8, 2013, Ethics Awareness Day (EAD).
 - An EAD kick-off could be held on March 7, 2013.
 - March was National Ethics Awareness month.
 - Staff was attempting to include a featured speaker at the COE March 8, 2013, meeting in the Board of County Commissioner's chambers.
 - In partnership with the Palm Beach County School Board (PBCSB), programs were being developed to provide three separate awards to students from lower, middle, and upper schools.
 - Lower school student projects would include art that reflected ethics, an essay contest for middle school, and ethics videos from the high-school level.
 - The COE could use art designs from grades one through four for COE bus advertising and ethics videos from high-school students on the COE YouTube channel.
 - On EAD, staff wanted to recognize individuals who had followed the proper paths set forth by the COE.
 - The PBCSB initiated the Ethics in Action program in 2011, and hosted its first ethics bowl in May 2012.

XI. – CONTINUED

- The PBCSB would like the final ethics team to practice a debate in front of the COE on March 7, 2013, before the April 2013, National Ethics Bowl Competition occurred.
- The COE had ongoing internship programs with the University of Miami, Palm Beach State College, Palm Beach Atlantic, and Florida Atlantic University's Honors College.
- Staff was developing nonprofit director training to help employees and officials comply with requirements.
- Trainings regarding charitable solicitation, the lobbyist registration ordinance, outside employment, and the gift laws would be available on the COE website and on the YouTube channel once they were finalized.
- Events at the Palm Beach County Planning Congress and the Chamber of Commerce were approaching, and Mr. Johnson would be presenting at both events.

Mr. Johnson said that advisory opinion annotations were not yet completed, and that the application was cost prohibitive.

Ms. Rogers said that all COE website contents were available in portable document format (pdf), and that people using either a Google or Safari browser could save information onto their feeds and in their computer's library through a mobile phone.

BOARD DIRECTION:

Commissioner Farach requested that staff research a COE application since costs differed from what the board had previously discussed. He said that the application costs were \$2,000 or \$3,000, and that funds from the COE's budget possibly could be used.

Ms. Rogers said that staff was concerned with lower-cost applications which required advertising, since the COE would be unable to control the advertising on those applications. She said that, staff would continue to work on the matter until an effective mechanism was found.

XI. – CONTINUED

Commissioner Harbison suggested that staff converse with David Baker or Marty Rogol regarding the Ethics Day activities.

Commissioner Fiore suggested that the COE offer newly elected officials special ethics training.

Ms. Rogers said that:

- Staff had reviewed an emailing model created by the governor's office.
- Emails associated with a COE investigation were disclosed at the end of an investigation process.
- The COE would be prohibited from immediately releasing emails associated with an investigation into a searchable database.
- Difficulty existed in allowing public access to emails through a searchable database that would not compromise an investigation.

XII. EXECUTIVE DIRECTOR COMMENTS – None

XIII. COMMISSION COMMENTS – None

XIV. PUBLIC COMMENTS – None

XV. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.

At 4:44 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VI Processed Advisory Opinions

RQO 12-073 Josette Kaufmann

A non-profit director asked whether complimentary tickets may be given to local elected officials to attend the “River of Grass Gala”, hosted by the Arthur R. Marshall Foundation for the Everglades (the Foundation) at the Colony Hotel on December 8, 2012 where tickets are supplied directly by the Foundation.

Staff submits the following for COE review: elected officials are not prohibited from accepting a ticket, pass or admission in connection with public events related to official county or municipal business, if furnished by a non-profit sponsor organization of the event, provided that the sponsor organization does not employ a lobbyist, and further provided the ticket is given to the elected official by a representative of the organization who does not otherwise sell, lease or lobby the official.

Should the foundation choose to provide complimentary tickets to local elected officials and the combined value of the tickets exceeds \$100, the official or employee will need to report the gift pursuant to Section 2-444 of the Code, or as required under §112.3148, Florida Statutes. The public official or employee may not use his or her official position to offer a benefit to an organization or any sponsor of the event in exchange for the tickets.

RQO 12-075 John Randolph

A Town Attorney asked whether an elected official who serves as the chairman of the board of a private company is prohibited from voting on changes to a zoning variance unrelated to the official’s board or company. The variance is opposed by an entity owned in part by a compensated board member of the official’s private sector employer.

Staff submits the following for COE review: elected officials are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves, their outside employer *or anyone who is known to the official to work for that outside employer*, not shared with similarly situated members of the general public. Based on the facts presented the elected official is prohibited from voting on this matter.



Palm Beach County Commission on Ethics

Commissioners
Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director
Alan S. Johnson

November 20, 2012

Josette Kaufmann, Executive Director
Arthur R. Marshall Foundation for the Everglades
1028 N. Federal Hwy
Lake Worth, FL 33460

Re: RQO 12-073
Gift Law

Dear Ms. Kaufmann,

Your request for an 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 email dated November 2, 2012 whether complimentary tickets may be given to local elected officials to attend the "River of Grass Gala", hosted by the Arthur R. Marshall Foundation (the Foundation) for the Everglades at the Colony Hotel on December 8, 2012 where tickets are supplied directly by the Foundation.

IN SUM, elected officials are not prohibited from accepting a ticket, pass or admission in connection with public events related to official county or municipal business, if furnished by a non-profit sponsor organization of the event, provided that the sponsor organization does not employ a lobbyist, and further provided the ticket is given to the elected official by a representative of the organization who does not otherwise sell, lease or lobby the official.

Should the foundation choose to provide complimentary tickets to local elected officials and the combined value of the tickets exceeds \$100, the official or employee will need to report the gift pursuant to Section 2-444 of the code, or as required under §112.3148, Florida Statutes. The public official or employee may not use his or her official position to offer a benefit to your organization or any sponsor of the event in exchange for the tickets.

THE FACTS as we understand them are as follows:

You are the executive director of the Arthur R. Marshall Foundation (the Foundation). The Foundation is a 501(c)3 non-profit organization headquartered in Lake Worth. It neither employs lobbyists, nor is it a vendor of Palm Beach County or a municipality within the county. The mission of the Foundation is to develop, promote and deliver science-based education and public outreach programs central to restoration of the greater Everglades ecosystem and its historic "River of Grass." This December, you will be hosting a fundraising event at the Colony hotel in Palm Beach. Recently, an elected official contacted your office and asked whether they were invited to attend the event without charge or

whether they were expected to pay for tickets. Wanting to follow the rules established by the Code of Ethics, you contacted staff for an advisory opinion on how best to proceed.

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

Sec. 2-444. Gift law.

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section. (Emphasis added)

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

(2) *All other officials and employees who are not reporting individuals under state law.*

(a) *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics.

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, *entertainment, hospitality*, item or promise, or in any other form, without adequate and lawful consideration. (Emphasis added)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

(i) A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a non-profit sponsor organization of such public event, or if furnished pursuant to a contract between the event's non-profit sponsor and the county or municipality as applicable, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass, or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist or principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the ticket, pass or admission must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2).

With the exception of reporting requirements, tickets provided to an elected official in their official capacity by a non-profit organization are not considered gifts so long as the non-profit organization does not employ a lobbyist and the invitation to the event is made by a representative who is *not otherwise a vendor, lobbyist, principal or employer of a lobbyist*. The Foundation is a nonprofit organization as contemplated by this subsection. Should the Foundation elect to provide tickets to officials or to county and municipal staff, it is not prohibited from doing so.¹ To be clear, if the Foundation was a vendor or

¹ RQO 11-032, RQO 11-082

lobbyist of an elected official's governmental entity, the elected official would be absolutely prohibited from soliciting a ticket for their personal benefit or for the benefit of another official or employee or relative or household member of the elected official or employee.

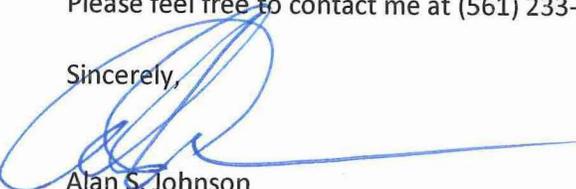
IN SUMMARY, based on the facts submitted, the Palm Beach County Code of Ethics does not prohibit elected officials from accepting tickets to the Foundations River of Grass Gala should the Foundation choose to provide them. If the value of tickets given to any individual elected official or employee exceeds \$100, the official or employee may be required to report these tickets as gifts under the Code of Ethics and/or state law. Please, keep in mind that a ticket may not be given or accepted as a quid pro quo in exchange for an "official action taken" or "duty performed."

Further, the Code of Ethics does not apply to fundraising activities conducted by Foundation directors, officers or employees provided they are not otherwise public officials or employees of the county or municipalities within the county.

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

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

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mcr/gal



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

November 14, 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 12-075
Voting Conflicts

Dear Mr. Randolph,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your submission dated November 14, 2012 whether an elected official who serves as the chairman of the board of a private company is prohibited from voting on changes to a zoning variance unrelated to the official's board or company. The variance is opposed by an entity owned in part by a board member of the official's private sector employer.

IN SUM, elected officials are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves, their outside employer or anyone who is known to the official to work for that outside employer, not shared with similarly situated members of the general public. Based on the facts presented the elected official is prohibited from voting on this matter.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Palm Beach (the Town). The Town Council is voting on whether to approve an application made by Del Frisco's restaurants (Del Frisco's). At this time, whether or not Del Frisco's opens a Palm Beach location is dependent upon Council approval of a special exception and variance. Del Frisco's application has drawn opposition from several existing Town restaurants.

In his private capacity, one of the Town Council members, Councilman Wildrick, serves as Chairman of the Board for a publically traded company (PTC). One of the existing Town restaurants opposing the application is owned by a group of investors. A member of this partnership (restaurant owner) also serves as a member of the board of the PTC. Both Councilman Wildrick and the restaurant owner are compensated for their board positions.

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:

Sec. 2-442. Definitions

Outside employer or business includes:

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

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 spouse or domestic partner, or someone who is *known to such official or employee to work for such outside employer or business.* (emphasis added)

§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, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics.

Section 2-443(a) prohibits elected officials 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, their outside business or employer, or someone who works for their outside business or employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an elected official 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 a person or entity as described in subsection (a).

Under the Code, to constitute a prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.¹ Where a gain or loss would require many steps and be subject to many contingencies, any such gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.²

¹ George v. City of Cocoa, Florida, 78 F.3d 494 (1996), RQO 12-063

² CEO 05-15, CEO 91-61, CEO 12-19

Councilman Wildrick serves as a director of PTC and receives compensation from PTC. As defined by §2-442, PTC is considered to be Councilman Wildrick's outside employer. Councilman Wildrick's fellow board member also receives compensation for his position as a member of the PTC board. The Code prohibits an official from voting on a matter which he or she knows or should know with the exercise of reasonable care will result in a financial benefit for someone who is known to the official to work for the official's outside employer.

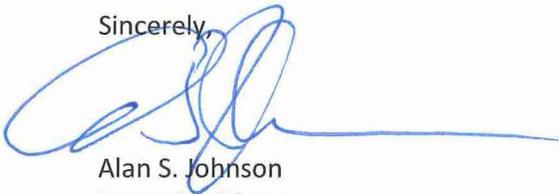
Should the Town approve the variance proposed by Del Frisco's, the establishment of an additional casual dining restaurant located on the island is likely to draw business away from current restaurants. Under the facts and circumstances presented, the potential financial loss to the restaurant owner, should the competitor restaurant's application be approved, is not remote and speculative. Conversely, avoiding additional competition is essentially a financial benefit to an existing restaurant standing in opposition to such an approval. Based on the facts presented, Councilman Wildrick is prohibited from voting on an application that may result in such a financial benefit or loss to his fellow PTC board member.

IN SUMMARY, an elected official may not use his official position, including participation and voting on issues before the Town Council, to financially benefit someone who is known to him to work for his outside employer. Therefore, based upon the facts and circumstances provided, Councilman Wildrick is prohibited by the Code of Ethics from voting or participating on this matter or taking any official action to benefit his fellow employee as defined by 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/mcr

VIII Proposed Advisory Opinions

RQO 12-072 Priscilla Taylor

A Palm Beach County Commissioner asked whether she was prohibited by the Palm Beach County Code of Ethics (the Code) from soliciting contributions from other governmental entities for her weekend radio show. Furthermore, she asked whether it was appropriate for her to use her Palm Beach County email as a County Commissioner to publicize her Sunday morning program.

Staff submits the following for COE review: Elected officials are prohibited from using their official position to give themselves a special financial benefit, not shared with similarly situated members of the public. An elected official is prohibited from soliciting anything of value for their personal benefit in their official capacity. This applies to the official, as well as anyone soliciting on their behalf. However, an elected official is not prohibited from soliciting donations or advertisers for a radio program in their private capacity, so long as the official does not solicit or accept donations in excess of \$100 from vendors, lobbyists, principals or employers of lobbyists who vend, lease or lobby the official's governmental entity.

RQO 12-074 Christy Goddeau

A City employee asked whether she may accept tickets from a close personal friend when the tickets were given to the friend by the friend's brother who is a vendor of the City.

Staff submits the following for COE review: The gift prohibitions of the Code apply to gifts given by a personal friend who is not a vendor where the gift is originally provided by the vendor with the intent to benefit the public employee. Factors to consider include the nature of the relationship between the vendor and 3rd party, the control retained by the donor/vendor over the gift, the nature of the relationship between the 3rd party and the public employee or official and the nexus between the gift donor and the public employee's department, official duties and responsibilities, among other factors. No employee or public official may accept an indirect gift or benefit that is intended to influence the conduct of the employee or official in the manner in which they perform their public duties.

The specific facts and circumstances surrounding a particular gift will determine whether or not the gift is considered an indirect prohibited gift provided with the intent to benefit the public employee. Based upon the unique facts and circumstances presented here, the employee is not prohibited from accepting a ticket from her friend to attend an upcoming concert.

RQO 12-076 Wil Hicks

A County employee asked whether he is prohibited by the Code of Ethics from contracting with Palm Beach County, his governmental employer.

Staff submits the following for COE Review: Public employees are prohibited from using their official position to give or influence others to give themselves or their outside business a special financial benefit. In addition, the Code prohibits a public employee or their outside business from contracting with the government they serve. However, there are several exceptions to this prohibition.

Specifically, the code provides an exemption for contracts entered into under a process of sealed, competitive bidding, where a public employee's outside business is the lowest bidder, and provided that the employee has not participated in the bid specifications or determination of the lowest bidder, has not used his or her position in any way to influence the award, and has disclosed the nature of his or her interest in the business submitting the bid.

RQO 12-078 Barry Yeckes

A Palm Beach County advisory board member asked as a member of a non-decisional, purely advisory board, whether the Palm Beach County Code of Ethics prohibits the board member's outside employer, Morgan Stanley Smith Barney, from contracting with the County.

Staff submits the following for COE review: as a member of a non-decisional, purely advisory board, a County advisory board member's employer is not prohibited from having a contractual relationship with the County provided that the subject contract or transaction is disclosed at a public meeting of the Palm Beach County Board of County Commissioners (BCC) and the advisory board at issue *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

If the board member's advisory board *does* provide regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction, the board member must obtain a waiver from the BCC before entering into the contract or transaction.

RQO 12-079 Hal Valeche

A Palm Beach County Commissioner asked whether he was prohibited from accepting tickets valued in excess of \$100 where the tickets were provided by Palm Beach County pursuant to a sponsorship agreement with a non-profit organization.

Staff submits the following for COE review: A County Commissioner is not prohibited from accepting tickets provided to Palm Beach County pursuant to a contract between the event's non-profit sponsor and Palm Beach County, where the event's non-profit sponsor does not sell, lease or lobby Palm Beach County. County Commissioners are identified by state law as reporting individuals and are therefore required to adhere to all standards and requirements imposed under state law regarding the reporting of gifts.

December 7, 2012

Commissioner Priscilla A. Taylor
301 N. Olive Ave.
West Palm Beach, FL 33401

Re: RQO 12-072
Misuse of Office/ Gift Law (solicitation)

Dear Commissioner Taylor,

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 December 6, 2012.

YOU ASKED in your submission dated October 29, 2012 whether you were prohibited by the Palm Beach County Code of Ethics (the Code) from soliciting contributions from members of the public and/or other governmental entities for your weekend radio show. Furthermore, you asked whether it was appropriate for you to use your Palm Beach County email as a County Commissioner to publicize your Sunday morning program.

IN SUM, as an elected official you are prohibited from using your official position as a County Commissioner to give yourself a special financial benefit, not shared with similarly situated members of the public. Therefore, you are prohibited from soliciting contributions from members of the public and/or other governmental entities in your official capacity. This would apply directly to you, as well as anyone indirectly soliciting on your behalf. Under the facts you have submitted, you are not prohibited from soliciting donations for your radio program in your private capacity, so long as you do not solicit or accept donations in excess of \$100 from vendors, lobbyists, principals or employers of lobbyists of Palm Beach County.

THE FACTS as we understand them are as follows:

You are a Palm Beach County Commissioner. Each week you present an hour-long program on SEAVIEW radio. In exchange for on-air time you pay the station \$350. SEAVIEW offers this opportunity to all members of the public. Essentially you are sponsoring your own show. SEAVIEW is not a vendor of the County, nor is the station a principal or employer of a lobbyist who lobbies the County.

As part of your agreement with SEAVIEW, you may solicit sponsorships to defray these costs. Sponsors would be identified during the program to suit their marketing purposes. SEAVIEW charges a standard rate of \$80 for a 60 second advertising spot. Sponsor/advertisers pay SEAVIEW directly. You are ultimately responsible for paying the \$350 fee to the extent that sponsorships do not defray the cost of the show.

You plan to use your on-air time to discuss matters of public interest. For example, your first program featured an interview with Palm Beach County Supervisor of Elections, Susan Bucher. You anticipate that you will expand your discussion to other topics that might be of interest to you and your local community. You asked whether it is appropriate for you to solicit sponsorships from other governmental entities when those entities do business with Palm Beach County or when those entities may require Palm Beach County approval of their annual budgets.

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(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;
- (5) A customer or client of the official or employee's outside employer or business;

§2-444. Gift Law

- (a)(1) No county Commissioner, member of a local governing body, mayor or chief executive 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 or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.
 - (1) Exceptions. The provision of subsection (g) shall not apply to:
 - e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality for a public purpose;

Section 2-443(a) prohibits an elected official from using their official position to give themselves or a customer or client¹ a special financial benefit not shared with similarly situated members of the general public. In RQO 11-029, this Commission opined that an elected official was not prohibited from soliciting on behalf of a non-profit organization where she served as a board member/director so long as she did so in her private capacity without use of her official title or position. The Commission has reinforced this principle in subsequent advisory opinions. Accordingly, you are not prohibited from soliciting advertisers or sponsors of your radio program so long as the solicitation is made in your personal capacity alone. However, in all cases, you may not solicit or accept more than \$100, annually in the aggregate, from a county vendor, lobbyist or their principals.

Second, if you accept sponsorships, you must take great care not to use your official position as a County Commissioner to benefit an advertiser or sponsor appearing before you in your official capacity whether they are governmental entities or private businesses. You are prohibited from participating and voting on any matter that would provide a financial benefit or loss to a customer or client of yours; in this case, an advertiser who has provided in excess of \$10,000 of sponsorship over the previous 24 months.

While the Code does not prohibit you from hosting a radio show, you are prohibited from promoting your program by using your county email address or title as Commissioner, if you plan to solicit sponsorships. Under these circumstances, you are responsible for maintaining a distinct separation between your public and personal persona and for policing others to refrain from using your official title in the program or its promotion. To be clear, the prohibition against using your official position, title or county email to promote your program only exists if you elect to solicit or accept sponsorship dollars or if County policy prohibits such use.

Furthermore, please keep in mind that there are alternative potential funding options for the program that would not trigger the prohibitions regarding the use of your official position contained in §2-443. First, you may continue to purchase the airtime with your personal funds. Second, the County may solicit donations in order to pay for the airtime, so long as it is accompanied by a transparent determination by the Board of County Commissioners that a Commissioner hosting a radio program discussing public issues is a public purpose. Finally, the county may itself decide to fund the program out of county revenue.

¹ 2-442 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).

IN SUMMARY, the Code does not prohibit you from hosting a radio show as a citizen discussing public issues and soliciting sponsorships from the public in your private capacity. However, you are prohibited from soliciting sponsorships in your official capacity to defray the cost of the program. Furthermore, you are prohibited in any capacity from soliciting donations in excess of \$100 annually in the aggregate, from vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the County.

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

PROPOSED

December 7, 2012

Ms. Christy L. Goddeau
City of Lake Worth
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

Re: RQO 12-074
Gifts from friends/Indirect gifts

Dear Ms. Goddeau,

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 December 6, 2012.

YOU ASKED in your submission dated November 13, 2012 whether a City employee may accept tickets from a close personal friend when the tickets were given to the friend by the friend's brother who is a vendor of the City.

IN SUM, the gift prohibitions of the Code apply to gifts given by a personal friend who is not a vendor where the gift is originally provided by the vendor with the intent to benefit the public employee. Factors to consider include the nature of the relationship between the vendor and 3rd party, the control retained by the donor/vendor over the gift, the nature of the relationship between the 3rd party and the public employee or official and the nexus between the gift donor and the public employee's department, official duties and responsibilities, among other factors. No employee or public official may accept an indirect gift or benefit that is intended to influence the conduct of the employee or official in the manner in which they perform their public duties.

The specific facts and circumstances surrounding a particular gift will determine whether or not the gift is considered an indirect prohibited gift provided with the intent to benefit the public employee. Based upon the unique facts and circumstances presented here, the employee is not prohibited from accepting a ticket from her friend to attend an upcoming concert.

THE FACTS as we understand them are as follows:

You are the Interim City Attorney for the City of Lake Worth. You are requesting an advisory opinion on behalf of Kari Hansen, a City purchasing agent. Ms. Hansen was invited by her close friend, Ms. Brown, to attend an upcoming concert. Ms. Hansen believes the value of the ticket/gift is \$400. Ms. Hansen met Ms. Brown in August of 2008 when their children were in the same preschool class, three years before Ms. Hansen began working for the City in 2011. They became friends and started helping each other with child care, setting up play dates for their children and regularly attended school functions together. Ms. Hansen considers Ms. Brown her closest friend and regularly exchanges birthday and holiday gifts with Ms. Brown and her son.

This fall, the City issued a Request for Proposal (RFP) for catering services at the City's new ballroom. Ms. Brown's brother (the Vendor) runs a local catering company. The Vendor submitted a proposal along with four other caterers. Ms. Hansen was not on the selection committee for the award and played no role in the final decision. Ms. Hansen has no independent purchasing authority and is not a state reporting individual. Ms. Hansen had not met the Vendor until he submitted his bid to the City. All five proposals were issued a notice of award on September 19th; everyone who submitted a proposal was selected. Based upon the City's procurement process, the City Commission will approve the final award. The procurement department is not involved in the final award process. The requesting department, Parks and Recreation, will prepare the staff report to the City Commission for final approval.

On November 8th, the Vendor contacted his sister and asked her if she would like tickets to a concert on Monday, November 19th. In text messages, the Vendor asked his sister if she wanted the tickets, and, if not, to let him know

and he would give them to someone else or attempt to re-sell them. No suggestion or direction was made as to how his sister ought to use the extra ticket. Ms. Brown contacted Ms. Hansen and asked her if she would like to go to the concert. Only after Ms. Hansen accepted did she find out that her friend had obtained the tickets from her brother, the Vendor. Ms. Hansen believes that Ms. Brown invited her because they enjoy each other's company, their children could spend the evening together and they could share the cost of a babysitter. It is not uncommon for Ms. Hansen and Ms. Brown to spend time together and exchange gifts. Ms. Brown does not work for the Vendor's company nor does she have an ownership interest in his company.

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 2-443(a) and (b) of the Code prohibit a public employee from accepting any benefit, directly or indirectly, as a quid pro quo in exchange for an official action. In addition, §2-444(e) prohibits employees and officials from accepting any gift in exchange for the past, present or future performance of his/her official duties.

Section 2-444(a)(1) states as follows:

No county commissioner, member of a local governing body, mayor or chief executive 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 or accept *directly or indirectly*, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

Ordinarily, a gift from a personal friend who is not herself a vendor or lobbyist/principal to a non-state reporting individual would be excluded from the reporting requirements of the gift law, unless the circumstances were to demonstrate that the gift was provided to Ms. Hansen by the donor with the intent to benefit her in relationship to her position as a public employee.¹

A vendor as defined in §2-442 includes any person or entity who has a pending bid proposal to sell goods or services to the county or a municipality as applicable. As an owner of a company with a pending bid proposal, Ms. Brown's brother is a vendor as defined by the code. Based upon his status as a vendor, in order to advise Ms. Hansen on whether she is prohibited from accepting the ticket from her friend, the Commission must determine whether or not the ticket was provided by the Vendor to his sister with the intent to benefit Ms. Hansen based upon her status as a public employee.

The Commission on Ethics (COE) has issued several opinions regarding the application of the Code to these indirect gifts. In the case of scholarships to children of public employees, the COE has opined that where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent.² In that case the gift is considered an indirect gift to the employee because the gift is based upon the status of public employment. Therefore, it was provided with the intent to benefit the employee. On the other hand, where a scholarship is offered to children of all town residents, including public employees, and a town employee's child receives one of the scholarships, it is not an indirect reportable gift.³ The basis for this exemption can be found in the Code exception for offers available to the general public.⁴

¹ §2-444(f)(2)(a). §2-444(g) defines a gift as *the transfer of anything of value* and §2-444(f) requires employees to complete an annual gift disclosure report, reporting any single gift in excess of \$100, unless one of several exceptions apply.

² RQO 11-081, also see, RQO 12-017 ("For purposes of gift law reporting, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, are reportable gifts under the Code of Ethics.")

³ RQO 11-057

⁴ §2-444(g)(1)f. "Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public."

The COE has previously opined that the following factors are relevant in determining whether a gift to a public employee from a third party, when provided to the third party by a vendor or lobbyist/principal of the employee's governmental employer, is an indirect gift to the public employee:

1. The existence or nonexistence of communications by the donor indicating the donor's intent to make or convey the gift to the public employee or official rather than to the intervening third person;
2. The existence or nonexistence of any relationship between the donor and the third person, independent of the relationship between the donor and the public employee or official, that would motivate a gift to the third person;
3. The existence or nonexistence of any relationship between the third person and the public employee or official that would motivate the gift.
4. Whether the same or similar gifts have been or are being provided to other persons having the same relationship to the donor as the third person;
5. Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the public employee or official, or another, would receive the gift;
6. Whether the third person was acting with the knowledge or consent of, or under the direction of, the donor;
7. Whether there were or were intended any payments or bookkeeping transactions between the third person and the donor, reimbursing the third person for the gift; and
8. The degree of influence or control the donor has over the third person.⁵

Although not suggested in the Florida Administrative Code, we find that the nexus between the gift donor and the public employee's department, official duties and responsibilities are significant factors to be considered. Employees and Public Officials are absolutely prohibited from accepting any gift or benefit that is intended to influence the conduct of the employee or official in the manner in which they perform their public duties.

Taking each of the above listed factors in turn, the facts and circumstances provided do not indicate that the Vendor intended to convey the tickets to Ms. Hansen rather than provide them to his sister for her exclusive use or disposition. The invitation from Ms. Brown to Ms. Hansen took place after the bid award had already been made and all caterers who responded to the RFP were listed on the Notice of Award and submitted to the City Council for future review. Aside from the fact that Ms. Hansen lacked discretion or other authority over the Vendor's submitted bid, contemporary text messages between the Vendor and his sister demonstrate that he offered the tickets to his sister for her benefit alone. Specifically the Vendor stated that he had two tickets to the concert and she was welcome to them. If she was not available, he would sell them.

Secondly, the Vendor is Ms. Brown's brother. Gifts given between siblings are commonplace and the facts submitted indicate that this was a familial gift. Next, there is a demonstrated independent ongoing relationship between Ms. Hansen and Ms. Brown. Ms. Hansen met Ms. Brown three years before she began working for the City. Ms. Hansen and Ms. Brown met because their children were in the same preschool class. They regularly attend school functions together and share childcare. Furthermore, Ms. Brown does not have any business relationship to the Vendor or the Vendor's company as her relationship to the Vendor is as a sibling.

Based upon the information presented there is no indication that the Vendor intended or suggested that Ms. Hansen or any other City employee or official should be the ultimate recipient of the extra ticket. Likewise, there is no indication that these tickets were offered as a quid pro quo or reward for prior official behavior. Based upon statements made to COE staff, in the past the Vendor has been very generous to his sister and her son; a gift such as this one is not out of the ordinary based upon their relationship. In addition to her written submission, Ms. Hansen repeated to COE staff that she and Ms. Brown regularly exchange holiday and birthday gifts.

⁵ Fla. Admin. Code R. 34-13.310(6)(c)

An important factor in determining whether a gift is indirectly given to a public employee is whether or not there is a nexus between the gift provided and the employee's official position. Ms. Hansen does work in the procurement department that oversaw the processing of Mr. Brown's bid. That being said, Ms. Hansen had no decision-making authority in her position. Furthermore, five caterers responded to the RFP at issue here. All five were selected and provided with a Notice of Award on September 19th, 2012. Because all bidders were treated similarly, there is no evidence that Ms. Hansen did anything in her official position to benefit the Vendor. Furthermore, Ms. Hansen was not invited by Ms. Brown to attend the concert until November 8th; 19 days after the awards were distributed.

Moreover, while the final award has not been issued, the City utilizes a decentralized procurement process. After examining the submissions made, the finalists are submitted to the City Commission. The procurement department will not present the bids or prepare a staff report of those bids. That information will be assembled by Parks and Recreation staff, the department requesting the bids. At no time did or will Ms. Hansen have discretion over the approval of Mr. Brown's proposal.

Based upon these specific facts and circumstances, the COE finds that there is no indication that this gift was given to Ms. Brown by her brother as an indirect gift to influence Ms. Hansen's conduct or the manner in which she performs her official duties. Accordingly, she is not prohibited from accepting the concert ticket and attending the event with her friend. This opinion is limited to the facts provided by City Attorney and Ms. Hansen. There is no bright line in determining when a gift provided to a third party and ultimately given to a public official or employee is an indirect gift from the original donor through a third party. Whether or not an employee is a recipient of an indirect gift depends upon the facts and circumstances surrounding the gift.

IN SUMMARY, based upon the facts you have submitted, the gift to a City employee of a concert ticket valued at \$400, originally provided to the City employee's friend by the friend's brother, a City vendor, is not an indirect prohibited gift to the public employee for the following reasons:

The gift was directly and unconditionally given to the Vendor's sister. There is an independent relationship between the Vendor and his sister that would motivate the gift of tickets to her. Gifts from the Vendor to his sister are commonplace. The sister was not acting under the direction of the Vendor, nor was she being reimbursed by the Vendor for the cost of the ticket being given to the City employee. There is a close independent relationship between the Vendor's sister and the City employee that pre-dates her public employment. Gift exchanges between the sister and her friend are commonplace. The Vendor's sister had full and independent decision-making authority to determine whether the City employee, or another, would receive the gift. There were no communications by the Vendor indicating his intent to convey the gift to the public employee. Lastly, although the Vendor's bid was processed by the department in which the City employee is employed, she had no independent decision-making authority over the bid process.

The COE cannot opine regarding speculative facts and circumstances. Ultimately, the status of an individual gift to any public official or employee will depend upon the facts and circumstances surrounding the individual gift.

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

December 7, 2012

Mr. Wil Hicks, Technical Services Coordinator
Palm Beach International Airport
846 Palm Beach International Airport
West Palm Beach, FL 33406

Re: RQO 12-076
Contractual Relationships-Low Bid Exception

Dear Mr. Hicks,

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 December 6, 2012.

YOU ASKED in your submission dated November 20, 2012, whether a prohibited conflict of interest is created if your outside business bids for and is awarded a contract with Palm Beach County, your public employer.

IN SUM, you may not use your official position to give or influence others to give you or your outside business a special financial benefit. In addition, the code prohibits you or your outside business from contracting with your public employer. However, there is an exception to the contractual relationship prohibition.

The code provides an exemption for contracts entered into under a process of sealed, competitive bidding, where your outside business is the lowest bidder, provided that you have not participated in the bid specifications or determination of the lowest bidder, have not used your position in any way to influence the award, and have disclosed the nature of your interest in the business submitting the bid. If you fully comply with these requirements, the code does not prohibit you or your outside business from contracting with the County.

THE FACTS as we understand them are as follows:

You are a technical services coordinator for Palm Beach International Airport (PBIA), a Palm Beach County Department. As a County employee you perform noise abatement reviews, inspect airport construction projects such as repairs to, or development of, taxiways, airport hangers, parking lots, and signs.

You own a small construction company that specializes in residential construction, remodeling and some commercial construction. Recently you reviewed the County's request for proposals site and noticed that there were quite a few requests for proposals for home construction and remodels. You are interested in submitting a bid for these non-airport construction projects.

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

Section 2-443(a) prohibits you, as a public employee from using your official position, or influencing others to take or fail to take any action, that would result in a special financial benefit not shared with similarly situated members of the general public, for yourself, your spouse or domestic partner or an outside business of yours or your spouse or domestic partner, among other listed persons or entities.

Section 2-443(d) states as follows:

Contractual relationships. No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official

or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to §2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.

Section 2-443(d) prohibits you or your outside business¹ from entering into any contract or other transaction for goods or services with the County, directly or indirectly, unless one of several exceptions applies. Based upon the facts you have submitted, as an owner of an outside business you are not eligible for a part-time employment waiver.

However, §2-442(e)(1) provides an exception for contracts awarded under a system of sealed, competitive bidding, where your company is the lowest bidder. The sealed bid exception applies so long as an employee does not 1) participate in the determination of bid specifications, 2) use their official position to influence or persuade their government entity other than by the mere submission of the bid, and 3) files a statement with the Supervisor of Elections and the Commission on Ethics disclosing the nature of the interest in the outside business prior to submitting the bid. Each individual bid submission must comply with the exception requirements listed in §2-443 (e)(1)a, b, and c.² So long as your bid submission comports with these requirements, you are not prohibited from applying and accepting bids awarded under this exception to the contractual relationship prohibition.

IN SUMMARY, as a public employee you may not use your official position to give a special financial benefit to you or your outside business. In addition, you may not enter a contract for goods or services with your government employer, unless an exception applies. Based on the facts you have submitted you would not be prohibited from participating in the bid process, and if successful, entering into a contract with the County provided that you comply with the requirements as set forth in §2-443 (e)(1)a, b, and c.

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

¹ §2-442(2) Outside employer or business includes any entity, other than the county, the state, or any other federal, regional, local or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner or employee, and from which he receives compensation for services rendered or goods sold or produced.

² RQO 11-090

December 7, 2012

Barry Yeckes, First Vice President
Morgan Stanley Wealth Management
490 East Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 12-078
Contractual Relationships

Dear Mr. Yeckes,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on December 6, 2012.

YOU ASKED in your email dated November 27, 2012, as a member of a non-decisional, purely advisory board of Palm Beach County, whether the Palm Beach County Code of Ethics prohibits your outside employer, Morgan Stanley Smith Barney, from contracting with the County.

IN SUM, as a member of the Palm Beach County Airport and Aviation Advisory Board (AAAB), your employer is not prohibited from having a contractual relationship with the County provided that the subject contract or transaction is disclosed at a public meeting of the Palm Beach County Board of County Commissioners (BCC) and your advisory board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

However, if the AAAB does provide regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction, you will need to obtain a waiver from the BCC before entering into the contract or transaction.

THE FACTS as we understand them are as follows:

You are currently a member of the AAAB, appointed by the BCC. The AAAB is a purely advisory board with no decision-making authority.

Your employer, Morgan Stanley Smith Barney (MSSB) has requested an opinion from the County that your position as an AAAB member will not prohibit MSSB from contracting with the County in the future. At this time, MSSB does not have an active contract, transaction or proposal with the county; however, it is listed on the county vendor list.

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

Section 2-443(d) prohibits an official or advisory board member from entering into *any contract or other transaction for goods or services with their respective...municipality.* This prohibition extends to all contracts or transactions between the municipality, and the official, directly or indirectly, *or the official or employees outside employer or business.* The contractual relationships section of the code prohibits such relationships on the basis of your outside employer, not your specific job title or duties for that

employer. However, this prohibition does not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

Should MSSB enter into a contract or transaction with the County, the Palm Beach County Code of Ethics (the Code) does not prohibit you from serving on the AAAB, so long as your respective board does not provide oversight, regulation, management or make policy recommendations regarding any contract between MSSB and the County. If your board, which is purely advisory and not decision-making, should provide regulation, oversight, management or make policy-setting recommendations on a future MSSB contract or transaction, it would be prohibited unless you obtain a waiver of this provision by the BCC.¹

IN SUMMARY, under the facts and circumstances you have submitted, your outside employer is not prohibited from entering into a contractual relationship with Palm Beach County based upon your appointment to serve on the County Airport and Aviation Advisory Board, a purely advisory board, provided that the subject contract or transaction is disclosed at a public meeting of the BCC and your advisory board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction*. If the board does provide the above, then you would need to obtain a waiver from the Board of County Commissioners.

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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

¹ Art. XIII, §2-443(e) Exceptions and waiver. The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy setting recommendations regarding the subject contract or transaction.

December 7, 2012

Hal Valeche, County Commissioner
Palm Beach County Board of County Commissioners
310 North Olive Avenue, Suite 1201
West Palm Beach, FL 33401

Re: RQO 12-079
Gift Law/Publically Ticketed Event

Dear Commissioner Valeche,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on December 6, 2012.

YOU ASKED in your email dated November 27, 2012, whether it violates the Palm Beach County Code of Ethics (the Code) for you to accept a ticket to attend the 2012 World Stem Cell Summit (WSCS) scheduled to be held December 2-5th at the Palm Beach County Convention Center.

IN SUM, based on the facts presented, you are not prohibited from accepting complementary admission to attend the conference. Palm Beach County is a sponsor of the event. The non-profit organization hosting the event provided tickets to sponsors pursuant to their sponsorship agreement. You will be attending the Summit in your official capacity as Palm Beach County Commissioner. Under these circumstances, acceptance of complementary admission for yourself, regardless of the value, does not violate the gift law sections of the Code of Ethics.

The total value of admission is \$795. You are an official identified by state law as a reporting individual. Therefore, you are required to adhere to all standards and requirements imposed under state law regarding the reporting of gifts.¹

THE FACTS as we understand them are as follows:

You are a Palm Beach County Commissioner. As a County Commissioner, you are identified by state law as a reporting individual for purposes of gift law reporting.

Palm Beach County is a sponsor of the 2012 World Stem Cell Summit (WSCS). The WSCS features over 150 international speakers and 65 hours of programming focusing on advancing treatments for specific diseases and conditions. More than 1,200 people are expected to attend from 25 countries. Palm Beach County received a limited number of admission packages in exchange for sponsoring the event. The WSCS is produced by the Genetics Policy Institute (GPI), a nonprofit organization. GPI is not a county vendor, nor does GPI employ a lobbyist that lobbies Palm Beach County. Palm Beach County staff approached you in your capacity as a County Commissioner and invited you to attend the event. The cost of faculty, non-profit or government admission is \$795.

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

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

Section 2-444. Gift Law

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

(1) Exceptions. The provisions of subsection (g) shall not apply to:

- i. Ticket pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit sponsor organization of such public event, or if furnished pursuant to a contract between the event's non-profit sponsor and the county or municipality as applicable, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the ticket, pass or admission must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2)

A gift is considered a transfer of anything of value without adequate and lawful consideration.² Here, admission to the conference is provided pursuant to a sponsorship agreement between the county and GDI, a non-profit organization as contemplated by §2-444(g)(1)i.

Section 2-444(f)(1) *Gift reports for officials identified by state law as reporting individuals*. Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

As a County Commissioner, you are a state reporting individual and must comply with the transparency requirements of state law. The Palm Beach County Code of Ethics annual reporting requirement only apply to non state reporting individuals.³

While attending the conference, you may not otherwise accept a gift in excess of \$100, in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the County.⁴ Lastly, you may not accept anything of value in exchange for the past, present or future performance of an official act or legal duty performed.⁵

IN SUMMARY, based on the facts presented, you are not prohibited from attending the WSCS conference. The host organization of the WSCS, GDI, does not sell, lease or lobby Palm Beach County and your admission is provided pursuant to a sponsorship agreement between the County and GDI. You must report the value of admission in accordance with state law and send a copy of any required submission to the Palm Beach County Commission on Ethics.

² §2-444(g)

³ RQO 11-089

⁴ RQO 11-047, 2-444(a)(1)

⁵ §2-444(e)

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

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

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

PROPOSED

MEMORANDUM OF UNDERSTANDING BETWEEN THE LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY AND THE PALM BEACH COUNTY COMMISSION ON ETHICS

This Memorandum of Understanding (MOU) is entered into this ___ day of _____, 2012, between the Lake Worth Community Redevelopment Agency, a special district established by the City of Lake Worth as authorized by §163.370(a), Florida Statutes, and Palm Beach County, a political subdivision of the State of Florida, by and through the Palm Beach County Board of County Commissioners for the services of the Palm Beach County Commission on Ethics.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly identify the roles and responsibilities of the Palm Beach County Commission on Ethics (“Commission on Ethics”) and the Lake Worth Community Redevelopment Agency (“Lake Worth CRA”) as they relate to the implementation of the Palm Beach County Code of Ethics. The Palm Beach county Code of Ethics is intended to promote honesty, integrity and accountability in local government. To support this goal the Lake Worth CRA submits to the jurisdiction of the Palm Beach County Commission on Ethics and seeks to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions. In particular, this MOU is intended to have the Commission on Ethics exercise the authority, functions and powers granted by the Commission on Ethics ordinance as to the CRA’s operations.

II. Background

In response to several high profile prosecutions of Palm Beach County and West Palm Beach City Commissioners, the Palm Beach County Commission adopted a county code of ethics, effective May 1, 2010. Since then, Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the Commission on Ethics and the ethics codes, effective June 1, 2011. As a dependant district, the Lake Worth CRA is not under the jurisdiction of the Commission on Ethics by statute or referendum. However, anticipating that local special districts would want to take advantage of the oversight, training and advisory functions of the Commission on Ethics, §2-258 of the commission on ethics ordinance states as follows:

The Commission on Ethics may be empowered to review, interpret, render advisory opinions, and enforce the county’s code of ethics or similar ordinances, rules or regulations duty adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission of ethics and said governmental agency.

The Lake Worth CRA and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals.

III. Agreement

The Commission on Ethics, subject to approval by the Board of County Commissioners, is authorized to negotiate agreements or memoranda of understanding with special districts and other public officers and entities, allowing the Commission on Ethics to exercise any and all authority, functions and powers set forth in the Commission on Ethics Ordinance for the benefit of the public entity, in this case the Lake Worth CRA.

The Lake Worth CRA seeks to submit to the jurisdiction of the Palm Beach County Commission on Ethics and to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions in order to promote honesty, integrity and accountability in government.

The Commission on Ethics and the Lake Worth CRA recognize that given the knowledge, experience, and ability of the staff of the Commission on Ethics in conducting investigations and interpreting the Palm Beach County Code of Ethics, the Commission on Ethics is in the best position to expeditiously and economically fulfill these services for the CRA.

This Memorandum of Understanding authorizes the Commission on Ethics to exercise the authority, functions and powers granted by the Commission on Ethics ordinance over the operations of the Lake Worth CRA.

a. Effective Date and Term

This Memorandum of Understanding shall take effect upon execution by the Board of County Commissioners. This Memorandum of Understanding will then be in effect for three (3) years. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the CRA, any ongoing CRA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed.

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

b. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics ordinance and Code of Ethics ordinance in regard to the Lake Worth CRA, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complaints within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and 3) develop and deliver training programs and ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.

- B) The Commission on Ethics shall have the power to conduct investigations and receive full and unrestricted access to the records of the board of directors and staff of the Lake Worth CRA.
- C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with §162.08 Florida Statutes. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.
- D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Executive Director or designee shall notify the appropriate civil, criminal, or administrative agencies. In the case of a possible violation of an internal rule, regulation or policy governing a Lake Worth CRA staff member or director, the Executive Director or designee shall also notify the Chairman of the CRA.
- E) The Commission on Ethics shall have the power to require directors and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics “hotline” will receive complaints related to Lake Worth CRA operations. The Lake Worth CRA will support and assist the Commission on Ethics in publicizing the “hotline” and encouraging the reporting of ethics violations by local citizens, officials and employees.
- G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own Initiative
- H) All records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in §112.3188(2) and §112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered “an appropriate local official” for purpose of whistleblower protection provided by §112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to Lake Worth CRA directors and staff. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.
- K) The Commission on Ethics shall monitor the costs of investigations undertaken.
- L) The Commission on Ethics will provide an invoice for services rendered under this Memorandum of Understanding. The CRA agrees to provide payment to Palm Beach County within thirty (30) days of receiving an invoice.

- M) As part of its obligation under this Memorandum of Understanding, CRA staff will in all instances cooperate fully with Commission on Ethics staff regarding issues of staff and vendor training and in timely providing records requested by staff investigators.
- N) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in §57.105 Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more material false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission shall order the complaining party to pay any cost and attorneys fees incurred by the Commission on Ethics, the Lake Worth CRA and or the alleged violator.
- O) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, outside employment waivers, final orders and advisory opinions.

IV. Provision for fees

As authorized by §2-258 of the code of ethics, this Memorandum of Understanding shall include a provision for fees to be paid to the Commission on Ethics from the Lake Worth CRA in exchange for such benefits at a rate established by the Commission on Ethics. The fee schedule adopted pursuant to this Memorandum of Understanding is as indicated. These rates are fixed for the term of the contract and subject to change thereafter. There will be no cost to the CRA for training. Appeals will be billed on an hourly basis only at a rate of forty dollars (\$40) per hour. Regarding option B (Event option) for the avoidance of doubt, the cost a complaint which proceeds through multiple phases will be the sum of the phases completed. For example, a complaint through final hearing or settlement would cost two thousand fifty dollars (\$2,050).

Option A: Hourly []

Director	\$89
Attorney	\$40
Investigator	\$45
Administrative	\$40

Option B: Event []

Advisory opinion	\$ 200
Complaint (inquiry through legal sufficiency finding)	\$ 300
Complaint (investigation through probable cause hearing)	\$ 1,000
Complaint (probable cause hearing to settlement or final hearing)	\$ 750

V. Delegation of Duty

Nothing contained herein shall be deemed to delegate the constitutional or statutory duties of state, county, or municipal officers.

VI. Liability

The parties to this Memorandum of Understanding and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to §768.28, Florida statutes.

VII. Controlling Law

This Memorandum or Understanding shall be interpreted and construed according to, and governed by, the laws of the State of Florida. Any and all legal action necessary to enforce the Memorandum of Understanding will be held in Palm Beach County.

VIII. Remedies

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

IX. Severability

In the event any term or provision of this Memorandum of Understanding is determined by a court of competent jurisdiction to be illegal or otherwise invalid, such provision shall be construed or deleted and shall not affect the remaining portions of this Memorandum of Understanding and the remainder shall be construed to be in full force and effect.

X. Amendment

This Memorandum of Understanding shall not be modified or amended except by written agreement duly executed by the parties hereto.

XI. Notice

Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Memorandum of Understanding, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Commission on Ethics: 2633 Vista Parkway
West Palm Beach, FL 33411

To Lake Worth CRA: 29 South J Street, Unit 1
Lake Worth, FL 33460

and

David N. Tolces, Esquire
GOREN, CHEROF, DOODY & EZROL, P.A.
3099 East Commercial Boulevard, Suite 200
Ft. Lauderdale, FL 33308

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon execution by the Palm Beach County Board of County Commissioners.

XIII. Point of Contact

For purposes of fulfilling the duties and responsibilities of this Memorandum of Understanding, the points of contact will be as follows:

Commission on Ethics:

Megan Rogers, Staff Counsel
2633 Vista Parkway
West Palm Beach, FL 33411
Ethics@palmbeachcountyethics.com
(561) 233-0724

Lake Worth CRA:

Joan Oliva, Executive Director
29 South J Street, Unit 1
Lake Worth, FL 33460
joliva@lakeworth.org
(561) 493-2550

[remainder of this page left intentionally blank]

XIV. Entirety of Agreement

This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, THROUGH
ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Clerk

By: _____
Chair

[SEAL]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Leonard W. Berger
Chief Assistant County Attorney

By: _____
Alan S. Johnson, Executive Director
Commission on Ethics

ATTEST:

LAKE WORTH COMMUNITY REDEVELOPMENT
AGENCY

By: [Signature]
[SEAL]

By: [Signature]
Chair

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this 20TH day of NOVEMBER, 2012, by JOAN OLIVA, who is personally known to me, or _____ who has produced _____ as identification, and CARY SABOL, who is personally known to me, or _____ who has produced _____ as identification.



EMILIA THEODOSSAKOS
MY COMMISSION # DD 967672
EXPIRES: July 4, 2014
Bonded Thru Budget Notary Services

By: [Signature]
Notary Public

Print name of Notary Public, or affix commission stamp above

MEMORANDUM OF UNDERSTANDING BETWEEN THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY AND THE PALM BEACH COUNTY COMMISSION ON ETHICS

This Memorandum of Understanding (MOU) is entered into this ___ day of _____, 2012, between the Delray Beach Community Redevelopment Agency, a special district established by the City of Delray Beach as authorized by §163.370(a), Florida Statutes, and Palm Beach County, a political subdivision of the State of Florida, by and through the Palm Beach County Board of County Commissioners for the services of the Palm Beach County Commission on Ethics.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly identify the roles and responsibilities of the Palm Beach County Commission on Ethics (“Commission on Ethics”) and the Delray Beach Community Redevelopment Agency (“Delray Beach CRA”) as they relate to the implementation of the Palm Beach County Code of Ethics. The Palm Beach county Code of Ethics is intended to promote honesty, integrity and accountability in local government. To support this goal the Delray Beach CRA submits to the jurisdiction of the Palm Beach County Commission on Ethics and seeks to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions. In particular, this MOU is intended to have the Commission on Ethics exercise the authority, functions and powers granted by the Commission on Ethics ordinance as to the CRA’s operations.

II. Background

In response to several high profile prosecutions of Palm Beach County and West Palm Beach City Commissioners, the Palm Beach County Commission adopted a county code of ethics, effective May 1, 2010. Since then, Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the Commission on Ethics and the ethics codes, effective June 1, 2011. As a dependant district, the Delray Beach CRA is not under the jurisdiction of the Commission on Ethics by statute or referendum. However, anticipating that local special districts would want to take advantage of the oversight, training and advisory functions of the Commission on Ethics, §2-258 of the commission on ethics ordinance states as follows:

The Commission on Ethics may be empowered to review, interpret, render advisory opinions, and enforce the county’s code of ethics or similar ordinances, rules or regulations duly adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission of ethics and said governmental agency.

The Delray Beach CRA and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals.

III. Agreement

The Commission on Ethics, subject to approval by the Board of County Commissioners, is authorized to negotiate agreements or memoranda of understanding with special districts and other public officers and entities, allowing the Commission on Ethics to exercise any and all authority, functions and powers set forth in the Commission on Ethics Ordinance for the benefit of the public entity, in this case the Delray Beach CRA.

The Delray Beach CRA seeks to submit to the jurisdiction of the Palm Beach County Commission on Ethics and to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions in order to promote honesty, integrity and accountability in government.

The Commission on Ethics and the Delray Beach CRA recognize that given the knowledge, experience, and ability of the staff of the Commission on Ethics in conducting investigations and interpreting the Palm Beach County Code of Ethics, the Commission on Ethics is in the best position to expeditiously and economically fulfill these services for the CRA.

This Memorandum of Understanding authorizes the Commission on Ethics to exercise the authority, functions and powers granted by the Commission on Ethics ordinance over the operations of the Delray Beach CRA.

a. Effective Date and Term

This Memorandum of Understanding shall take effect upon execution by the Board of County Commissioners. This Memorandum of Understanding will then be in effect for three (3) years. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the CRA, any ongoing CRA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed.

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

b. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics ordinance and Code of Ethics ordinance in regard to the Delray Beach CRA, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complaints within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and 3) develop and deliver training programs and ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.

- B) The Commission on Ethics shall have the power to conduct investigations and receive full and unrestricted access to the records of the board of directors and staff of the Delray Beach CRA.
- C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with §162.08 Florida Statutes. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.
- D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Executive Director or designee shall notify the appropriate civil, criminal, or administrative agencies. In the case of a possible violation of an internal rule, regulation or policy governing a Delray Beach CRA staff member or director, the Executive Director or designee shall also notify the Chairman of the CRA.
- E) The Commission on Ethics shall have the power to require directors and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics “hotline” will receive complaints related to Delray Beach CRA operations. The Delray Beach CRA will support and assist the Commission on Ethics in publicizing the “hotline” and encouraging the reporting of ethics violations by local citizens, officials and employees.
- G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own Initiative
- H) All records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in §112.3188(2) and §112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered “an appropriate local official” for purpose of whistleblower protection provided by §112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to Delray Beach CRA directors and staff. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.
- K) The Commission on Ethics shall monitor the costs of investigations undertaken.
- L) The Commission on Ethics will provide an invoice for services rendered under this Memorandum of Understanding. The CRA agrees to provide payment to Palm Beach County within thirty (30) days of receiving an invoice.

- M) As part of its obligation under this Memorandum of Understanding, CRA staff will in all instances cooperate fully with Commission on Ethics staff regarding issues of staff and vendor training and in timely providing records requested by staff investigators.
- N) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in §57.105 Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more material false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission shall order the complaining party to pay any cost and attorneys fees incurred by the Commission on Ethics, the Delray Beach CRA and or the alleged violator.
- O) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, outside employment waivers, final orders and advisory opinions.

IV. Provision for fees

As authorized by §2-258 of the code of ethics, this Memorandum of Understanding shall include a provision for fees to be paid to the Commission on Ethics from the Delray Beach CRA in exchange for such benefits at a rate established by the Commission on Ethics. The fee schedule adopted pursuant to this Memorandum of Understanding is as indicated. These rates are fixed for the term of the contract and subject to change thereafter. There will be no cost to the CRA for training. Appeals will be billed on an hourly basis only at a rate of forty dollars (\$40) per hour. Regarding option B (Event option) for the avoidance of doubt, the cost a complaint which proceeds through multiple phases will be the sum of the phases completed. For example, a complaint through final hearing or settlement would cost two thousand fifty dollars (\$2,050).

Option A: Hourly []

Director	\$89
Attorney	\$40
Investigator	\$45
Administrative	\$40

Option B: Event []

Advisory opinion	\$ 200
Complaint (inquiry through legal sufficiency finding)	\$ 300
Complaint (investigation through probable cause hearing)	\$ 1,000
Complaint (probable cause hearing to settlement or final hearing)	\$ 750

V. Delegation of Duty

Nothing contained herein shall be deemed to delegate the constitutional or statutory duties of state, county, or municipal officers.

VI. Liability

The parties to this Memorandum of Understanding and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to §768.28, Florida statutes.

VII. Controlling Law

This Memorandum or Understanding shall be interpreted and construed according to, and governed by, the laws of the State of Florida. Any and all legal action necessary to enforce the Memorandum of Understanding will be held in Palm Beach County.

VIII. Remedies

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

IX. Severability

In the event any term or provision of this Memorandum of Understanding is determined by a court of competent jurisdiction to be illegal or otherwise invalid, such provision shall be construed or deleted and shall not affect the remaining portions of this Memorandum of Understanding and the remainder shall be construed to be in full force and effect.

X. Amendment

This Memorandum of Understanding shall not be modified or amended except by written agreement duly executed by the parties hereto.

XI. Notice

Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Memorandum of Understanding, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Commission on Ethics: 2633 Vista Parkway
West Palm Beach, FL 33411

To Delray Beach CRA: 20 North Swinton Avenue
Delray Beach, FL 33411

and

David N. Tolces, Esquire
GOREN, CHEROF, DOODY & EZROL, P.A.
3099 East Commercial Boulevard, Suite 200
Ft. Lauderdale, FL 33308

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon execution by the Palm Beach County Board of County Commissioners.

XIII. Point of Contact

For purposes of fulfilling the duties and responsibilities of this Memorandum of Understanding, the points of contact will be as follows:

Commission on Ethics:

Megan Rogers, Staff Counsel
2633 Vista Parkway
West Palm Beach, FL 33411
Ethics@palmbeachcountyethics.com
(561) 233-0724

Delray Beach CRA:

Diane Colonna, Executive Director
20 North Swinton Avenue
Delray Beach, FL 33444
Colonna@mydelraybeach.com
(561) 276-8640

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XIV. Entirety of Agreement

This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, THROUGH
ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Clerk

By: _____
Chair

[SEAL]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Leonard W. Berger
Chief Assistant County Attorney

By: _____
Alan S. Johnson, Executive Director
Commission on Ethics

ATTEST:

DELRAY BEACH COMMUNITY REDEVELOPMENT
AGENCY

By: _____

By: _____
Chair

[SEAL]

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 2012, by _____, who is _____ personally known to me, or _____ who has produced _____ as identification, and _____, who is _____ personally known to me, or _____ who has produced _____ as identification.

By: _____
Notary Public

Print name of Notary Public, or affix commission stamp above

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into this ___ day of _____, 2012, between the Delray Beach Housing Authority, a special district established by the City of Delray Beach as authorized by §421.04(1), Florida Statutes, and Palm Beach County, a political subdivision of the State of Florida, by and through the Palm Beach County Board of County Commissioners for the services of the Palm Beach County Commission on Ethics.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly identify the roles and responsibilities of the Palm Beach County Commission on Ethics (“Commission on Ethics”) and the Delray Beach Housing Authority (“DBHA”) as they relate to the implementation of the Palm Beach County Code of Ethics. The Palm Beach county Code of Ethics is intended to promote honesty, integrity and accountability in local government. To support this goal the DBHA submits to the jurisdiction of the Palm Beach County Commission on Ethics and seeks to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions. In particular, this MOU is intended to have the Commission on Ethics exercise the authority, functions and powers granted by the Commission on Ethics ordinance as to the DBHA’s operations.

II. Background

In response to several high profile prosecutions of Palm Beach County and West Palm Beach City Commissioners, the Palm Beach County Commission adopted a county code of ethics, effective May 1, 2010. Since then, Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the Commission on Ethics and the ethics codes, effective June 1, 2011. As Special District of the State of Florida, the Delray Beach Housing Authority is not under the jurisdiction of the Commission on Ethics by statute or referendum. However, anticipating that local special districts would want to take advantage of the oversight, training and advisory functions of the Commission on Ethics, §2-258 of the commission on ethics ordinance states as follows:

The Commission on Ethics may be empowered to review, interpret, render advisory opinions, and enforce the county’s code of ethics or similar ordinances, rules or regulations duty adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission of ethics and said governmental agency.

The DBHA and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals.

III. Agreement

The Commission on Ethics, subject to approval by the Board of County Commissioners, is authorized to negotiate agreements or memoranda of understanding with special districts and other public officers and entities, allowing the Commission on Ethics to exercise any and all authority, functions and powers set forth in the Commission on Ethics Ordinance for the benefit of the public entity, in this case the DBHA.

The DBHA seeks to submit to the jurisdiction of the Palm Beach County Commission on Ethics and to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions in order to promote honesty, integrity and accountability in government.

The Commission on Ethics and the DBHA recognize that given the knowledge, experience, and ability of the staff of the Commission on Ethics in conducting investigations and interpreting the Palm Beach County Code of Ethics, the Commission on Ethics is in the best position to expeditiously and economically fulfill these services for the DBHA.

This Memorandum of Understanding authorizes the Commission on Ethics to exercise the authority, functions and powers granted by the Commission on Ethics ordinance over the operations of the DBHA.

a. Effective Date and Term

This Memorandum of Understanding shall take effect upon execution by the Board of County Commissioners. This Memorandum of Understanding will then be in effect for three (3) years. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the DBHA, any ongoing DBHA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed.

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

b. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics ordinance and Code of Ethics ordinance in regard to the DBHA, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complaints within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and 3) develop and deliver training programs and ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.
- B) The Commission on Ethics shall have the power to conduct investigations and receive full and unrestricted access to the records of the board of directors and staff of the DBHA.
- C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with §162.08 Florida Statutes. The Commission on Ethics shall not interfere with any ongoing criminal

investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.

- D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Executive Director or designee shall notify the appropriate civil, criminal, or administrative agencies. In the case of a possible violation of a rule, regulation or policy governing a DBHA staff member or director, the Executive Director or designee shall also notify the Delray Beach City Council and the Chairman of the DBHA.
- E) The Commission on Ethics shall have the power to require directors and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics “hotline” will receive complaints related to DBHA operations. The DBHA will support and assist the Commission on Ethics in publicizing the “hotline” and encouraging the reporting of ethics violations by local citizens, officials and employees.
- G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own Initiative
- H) All records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in §112.3188(2) and §112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered “an appropriate local official” for purpose of whistleblower protection provided by §112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to DBHA directors and staff. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.
- K) The Commission on Ethics shall monitor the costs of investigations undertaken.
- L) The Commission on Ethics will provide an invoice for services rendered under this Memorandum of Understanding. The DBHA agrees to provide payment to Palm Beach County within thirty (30) days of receiving an invoice.
- M) As part of its obligation under this Memorandum of Understanding, DBHA staff will in all instances cooperate fully with Commission on Ethics staff regarding issues of staff and vendor training and in timely providing records requested by staff investigators.
- N) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in §57.105 Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more material false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission shall order the

complaining party to pay any cost and attorneys fees incurred by the Commission on Ethics and or the alleged violator.

- O) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, outside employment waivers, final orders and advisory opinions.

IV. Provision for fees

As authorized by §2-258 of the code of ethics, this Memorandum of Understanding shall include a provision for fees to be paid to the Commission on Ethics from the DBHA in exchange for such benefits at a rate established by the Commission on Ethics. The fee schedule adopted pursuant to this Memorandum of Understanding is as indicated. These rates are fixed for the term of the contract and subject to change thereafter. There will be no cost to the DBHA for training. Appeals will be billed on an hourly basis only at a rate of forty dollars (\$40) per hour. Regarding option B (Event option) for the avoidance of doubt, the cost a complaint which proceeds through multiple phases will be the sum of the phases completed. For example, a complaint through final hearing or settlement would cost two thousand fifty dollars (\$2,050).

Option A: Hourly []

Director	\$89
Attorney	\$40
Investigator	\$45
Administrative	\$40

Option B: Event []

Advisory opinion	\$ 200
Complaint (inquiry through legal sufficiency finding)	\$ 300
Complaint (investigation through probable cause hearing)	\$ 1,000
Complaint (probable cause hearing to settlement or final hearing)	\$ 750

V. Delegation of Duty

Nothing contained herein shall be deemed to delegate the constitutional or statutory duties of state, county, or municipal officers.

VI. Liability

The parties to this Memorandum of Understanding and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to §768.28, Florida statutes.

VII. Controlling Law

This Memorandum or Understanding shall be interpreted and construed according to, and governed by, the laws of the State of Florida. Any and all legal action necessary to enforce the Memorandum of Understanding will be held in Palm Beach County.

VIII. Remedies

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

IX. Severability

In the event any term or provision of this Memorandum of Understanding is determined by a court of competent jurisdiction to be illegal or otherwise invalid, such provision shall be construed or deleted and shall not affect the remaining portions of this Memorandum of Understanding and the remainder shall be construed to be in full force and effect.

X. Amendment

This Memorandum of Understanding shall not be modified or amended except by written agreement duly executed by the parties hereto.

XI. Notice

Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Memorandum of Understanding, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

- To Commission on Ethics: 2633 Vista Parkway
West Palm Beach, FL 33411
- To DBHA: 701 SE 6th Avenue
Delray Beach, FL 33483

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon execution by the Palm Beach County Board of County Commissioners.

XIII. Point of Contact

For purposes of fulfilling the duties and responsibilities of this Memorandum of Understanding, the points of contact will be as follows:

Commission on Ethics:
 Megan Rogers, Staff Counsel
 2633 Vista Parkway
 West Palm Beach, FL 33411
Ethics@palmbeachcountyethics.com
 (561) 233-0724

Delray Beach Housing Authority:
 Dorothy Ellington, President/CEO
 701 SE 6th Ave.
 Delray Beach, FL 33483
dellington@dbha.org
 (561) 272-6766

XIV. Entirety of Agreement

This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, THROUGH
ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Clerk

By: _____
Chair

[SEAL]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Leonard W. Berger
Chief Assistant County Attorney

By: _____
Alan S. Johnson, Executive Director
Commission on Ethics

ATTEST:

DELRAY BEACH COMMUNITY REDEVELOPMENT
AGENCY

By: _____

By: _____
Chair

[SEAL]

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 2012, by _____, who is _____ personally known to me, or _____ who has produced _____ as identification, and _____, who is _____ personally known to me, or _____ who has produced _____ as identification.

By: _____
Notary Public

Print name of Notary Public, or affix commission stamp above