



Agenda

March 7, 2013

Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30 pm Executive Session from 2:45pm to 3:15pm Regular Agenda will resume 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

Interim Executive Director

Megan C. Rogers

Intake Manager

Gina A. Levesque

Interim Staff Counsel

Mark E. Bannon

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from February 7, 2013
- V. Executive Director Applicant Update and Interview
Procedure Discussion
- VI. Executive Session
 - a. C13-006
- VII. Lake Worth High School Mock Ethics Bowl
 - a. Ethics Bowl Case: Academic Integrity
- VIII. Processed Advisory Opinions (Consent Agenda)
 - a.
- IX. Items Pulled from Consent Agenda
 - a.
- X. Proposed Advisory Opinions
 - a. RQO 13-002
 - b. RQO 13-004
- XI. Palm Beach County Housing Finance Authority
 - a. RQO 13-003
- XII. Interim Executive Director Comments
 - a. Ethics Awareness Month Agenda
- XIII. Commission Comments
- XIV. Public Comments
- XV. Adjournment

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

FEBRUARY 7, 2013

**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) Interim Staff Counsel
Gina A. Levesque, COE Intake Manager
James A. Poag, COE Investigator
Megan C. Rogers, COE Interim Executive Director
Leilani Yan, County Human Resources Recruitment and Selection
Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Megan Rogers, Interim Commission on Ethics (COE) Executive Director, stated that a quorum was present.

Commissioner Manuel Farach said that electronic devices should be turned off or silenced, and that those wishing to speak should complete and submit a comment card containing the agenda item.

IV. APPROVAL OF MINUTES FROM JANUARY 10, 2013

MOTION to approve the January 10, 2013, minutes. Motion by Patricia Archer, seconded by Ronald Harbison, and carried 5-0.

V. PRESENTATION OF AWARD TO ALAN S. JOHNSON

Commissioner Daniel Galo commented that Alan Johnson had always been a good friend to many people and a great public servant. He thanked Mr. Johnson for the experience and opportunity to work together as advocates.

Commissioner Patricia Archer said that Mr. Johnson had left a strong impression on the COE and staff. She thanked him for his input, and she expressed admiration for his abilities and what he had accomplished.

Commissioner Robin Fiore stated that Mr. Johnson began the ethics vision that everyone had hoped for. She said that the COE would not have been as exemplary so soon without his capability and willingness to handle all aspects of the job. She thanked him on behalf of everyone in the county.

Commissioner Ronald Harbison commented that Mr. Johnson had set the bar high for anyone following in his footsteps. He said that he valued Mr. Johnson's friendship, and that he had grown to rely on his intellect, common sense, and judgment. He added that he would be looking for the type of culture that someone new would bring, and he thanked Mr. Johnson for bringing so much to the COE and to the community.

Gina Levesque, COE Intake Manager, said that from staff's perspective, Mr. Johnson had set in motion an office that was second to none in the county. She thanked him for bringing her on board, and she said that she would miss working with him.

Mark Bannon, COE Interim Staff Counsel, stated that he echoed Ms. Levesque's comments. He added that he had learned a great deal from Mr. Johnson, and that he would be missed.

James Poag, COE Investigator, thanked Mr. Johnson for giving him the opportunity to come on board. He said that he appreciated Mr. Johnson's understanding during many conversations. He added that Mr. Johnson was the consummate professional, and that he left a great impression on him.

V. – CONTINUED

Megan Rogers, COE Interim Executive Director, said that she never imagined having such an extraordinary mentor. She said that she was grateful to Mr. Johnson, and that she looked forward to seeing him in his new role.

Richard Radcliffe, League of Cities Executive Director, commented that Mr. Johnson had conducted himself with respect and dignity. He thanked Mr. Johnson for the effect that he made in setting the COE's foundation.

Marty Rogol, Chair, Ethics Committee, Leadership Palm Beach County, said that everyone who was involved in the COE's ordinance creation had been focused on how it would be implemented. He said that Mr. Johnson did an extraordinary job in setting up the COE.

Commissioner Farach said that Mr. Johnson should be singled out as the person most responsible for the county's current ethics culture, and he thanked him for a job well done.

Mr. Johnson said that he appreciated the respect that he had received from the COE members, his staff, and the community. He stated that the key to the COE's success was longevity and presence, and he thanked everyone.

(CLERK'S NOTE: Commissione Farach called a brief recess for taking photographs.)

RECESS

At 1:56 p.m., the chair declared the meeting adjourned.

RECONVENE

At 1:58 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, Galo, and Harbison present.

VI. EXECUTIVE DIRECTOR APPLICANT UPDATE AND PROCEDURE DISCUSSION

Leilani Yan, County Human Resources Recruitment and Selection Manager, said that:

- The COE Executive Director position was advertised and placed in multiple media sources from January 9-25, 2013.

VI. – CONTINUED

- The advertisement produced 57 applicants, which reflected the COE's minimum qualification requirement that the applicant possess a juris doctor degree, and that the search remain in Florida.
- Application packets should have been delivered to the COE approximately one week ago. The COE members could rerank and reorder the applications however they saw fit.
- The next step would be to discuss a shortlist. The following procedures occurred during the first Executive Director's selection:
 - After the application period closed, the COE chair had suggested that the panel members attend the next COE meeting and bring their top-ten candidate list. A request was also made that the panel members email their top-ten candidate lists to Ms. Yan.
 - A frequency table was made that depicted how often a candidate's name appeared in the various top-ten lists. The table served as a starting point for the COE meeting.
 - The COE meeting had an open discussion regarding the qualifications of each panel member's top-ten candidates that he or she wanted to move forward in the selection process.
- Some departments utilized telephone interviews to reduce a large candidate list to a manageable number for face-to-face interviews; however, they were difficult to perform in the public arena.

Commissioner Harbison said he recalled that the panel members had elected not to consider anyone appearing less than two or three times on the frequency table, although it was not strictly adhered to.

Commissioner Fiore said that she was pleased that some applicants had performed military service.

(This space intentionally left blank.)

VI. – CONTINUED

Responding to Commissioner Fiore, Ms. Yan stated that:

- The County did not possess a veterans' preference application for State senior management service positions; therefore, no requirement existed to give numerical or additional preference to veterans. Panel members could make personal preferences.
- The County was a veterans' preference employer; however, preference limitations existed based on the job classification being solicited.

(CLERK'S NOTE: During an attempted motion by Commissioner Fiore to approve that the panel members email their candidate list to Ms. Yan, questions and discussion ensued.)

Ms. Yan suggested that the panel members send emails to her of their top-ten candidate list.

Commissioner Galo said that Ms. Yan would perform a calculation of how often a candidate's name appeared in each panel member's top-ten list.

Ms. Yan said that:

- The panel members could decide to split the top-ten candidate list into the top five and then the next five.
- Weaker selected candidates could be brought back later for additional discussion.
- Panel members should limit their selections to those candidates with whom they wanted to speak in the public forum.
- Panel members could limit the number of candidates; however, they should not rank them.

MOTION to approve emailing Ms. Yan a list of up to 10 unranked candidates whom the panel members were most interested in interviewing. Motion by Robin Fiore.

Commissioner Fiore said that she supported choosing the top five and second five candidates, and not a top-ten list.

VI. – CONTINUED

(CLERK'S NOTE: Motion seconded later during discussion.)

Commissioner Harbison said that it was important to remember who would be interviewed.

Commissioner Archer stated that the panel members were not required to interview everyone on the top-ten list since that could be decided when reviewing the frequency table.

MOTION SECONDED by Patricia Archer.

Commissioner Farach said that once the lists were anonymously submitted, Ms. Yan would construct a frequency table of those candidates whom the panel members wanted to interview in a public forum.

UPON CALL FOR A VOTE, the motion carried 5-0.

Commissioner Farach said that the next step was the public interview process.

Ms. Yan said that public interviews could take place at the March 7, 2013, general COE meeting.

Ms. Levesque said that she would set March 21, 2013, as an alternate day. She clarified that the interviews would take place in the Board of County Commissioners' (BCC) chambers, and that County television Channel 20's staff would tape them.

Commissioner Farach requested that staff perform reference and background checks on the chosen top-ten candidates. He said that during the last interview process, the panel members were reading the candidates' writing samples while simultaneously performing interviews. He suggested that the candidates perform a written test approximately one week before the interviews.

Ms. Yan said that the candidates could be provided advanced study material to help them produce a product of their written communication and analytical abilities for the panel members.

Commissioner Farach suggested that Ms. Yan and Ms. Rogers draft an ethics brain teaser-type question that could be sent in advance to the candidates.

VI. – CONTINUED

Commissioner Harbison said that the COE should ensure that each candidate was the one who produced the written product.

Commissioner Fiore stated that the candidates could be sent advanced study material for written production in the BCC chambers.

Commissioner Farach said that the visual Internet communication application, Skype, could be utilized.

Ms. Yan said that:

- Both options were acceptable, however, the process should somehow be proctored.
- Each candidate could produce an affidavit stating that he or she produced the written product.
- Previously, candidates were given highly standardized, on-demand written samples with time constraints on-site.

Commissioner Farach suggested that Mr. Bannon and Mr. Poag sit with the candidates while they took the written test.

Commissioner Harbison suggested that the panel members read the candidates' written products between interviews.

Ms. Levesque commented that during the staff counsel interview process, candidates were given copies of the County's Code of Ethics (Code) and other materials in advance. Applicants could also draw information from the Internet. She added that they were allowed 40 minutes to write an advisory opinion.

Commissioner Farach suggested that staff work with Ms. Yan to implement a similar process.

Ms. Yan said that between the shortlist's creation and the interviews, there would be a short timeframe to gain background check releases, secure them, and provide the results to the panel members. She added that when the shortlisted candidates were selected, staff could contact each of them for two reference letters.

VI. – CONTINUED

Commissioner Archer said that if indecisiveness existed in choosing a candidate, the panel members could re-interview the top three candidates.

Commissioner Fiore said that she wanted assurance that the candidates interacted with staff regarding matters such as how the COE operated.

Ms. Yan stated that:

- No past issues existed when candidates had interacted with staff.
- Mr. Johnson had negotiated his salary with Brad Merriman, Assistant County Administrator. A written document was then produced with the agreed-to amount.
- No rule existed for salary negotiation; however, the hiring authority typically set the salary standard and approved the amount.

Commissioner Farach suggested that the COE provide a salary range, or further refine the salary ranged listed in the advertisement.

Ms. Yan commented that:

- The salary range was at the COE's discretion.
- The candidates' applications were public record; however, exemptions existed for those with certain occupations. A letter was sent to the last candidate pool advising them of the public record status.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. Request for Proposal (RQO 13-001)

MOTION to approve the consent agenda. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.

Commissioner Fiore said that RQO 13-001 was the first opinion letter that was not signed by the COE executive director.

Ms. Rogers clarified that whenever Mr. Johnson was out of the office, she would sign the letter as staff counsel. She said that since she was out of the office, Mr. Bannon signed the letter as acting staff counsel.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

IX. RQO 12-083

Ms. Rogers said that:

- A Town of Palm Beach (Town) attorney asked whether an elected official was prohibited from voting on changes to zoning regulations related to a five-acre area where an employee, who worked for the official's outside employer, was the part-owner of two restaurants within the plan area.
- Staff had submitted that:
 - Elected officials were prohibited from using their official positions, from participating, or from voting on an issue that would give a financial benefit to their outside employer, or to a person who worked for their outside employer, not shared with similarly situated members of the general public.
 - No bright line existed whether a contingent financial benefit similar to this situation created a conflict.
 - In evaluating a conflict of interest under the County's Code, the COE considered how many individuals would gain from a decision, and whether the gain or loss was remote and speculative.
 - Based on the facts and circumstances presented, including the limited class of persons or entities that stood to gain from the proposed ordinance and the existence of incentives provided by the zoning application, the potential financial benefit to the restaurant owner was not so remote and speculative as to eliminate a conflict; therefore, the Town official was prohibited from voting.

MOTION to approve proposed advisory opinion letter RQO 12-083. Motion by Daniel Galo, seconded by Robin Fiore, and carried 5-0.

X. INDEPENDENT BOARDS AUTHORIZED AND CREATED BY STATE LAW WHOSE MEMBERS ARE APPOINTED BY THE BOARD OF COUNTY COMMISSIONERS

X.a. RQO 12-077

Ms. Rogers advised that the COE should first discuss the advisory opinion and then staff's memorandum. She stated that:

- The Palm Beach County Housing Finance Authority (HFA) was an independent of the County and municipalities; therefore, the HFA was not within the COE's jurisdiction.
- Since an HFA member was appointed by the BCC, he or she was considered an official under the County's Code.
- An HFA potential appointee asked whether he was permitted to serve on the HFA based on contractual relationships that his outside employer may have with the HFA and with the County.
 - The individual was being appointed to the HFA since his outside employer did not have contracts with the HFA or the County.
 - By Code, these unique individuals were prohibited from contracting with the appointing entity rather than with the bodies that they served.
 - The outside employer could enter into contracts with the HFA but not with the County. Since the HFA was regulated by State statute, it was not within the COE's jurisdiction; therefore, the outside employer also could not contract with the County.
 - Staff had advised that the potential appointee could serve on the HFA.
- The BCC could grant waivers for advisory board members; however, the potential appointee would be considered an official so the waiver provision would not apply.
- If the HFA board member resigned from the HFA and maintained his outside employer relationship, under the Code, the outside employer could contract with the County.

X.a. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-077. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

Ms. Rogers said that:

- The HFA’s counsel, Skip Miller, and HFA Executive Director David Brandt had reviewed RQO 12-077 and had contacted COE staff.
- Staff met with Mr. Miller and Mr. Brandt and recognized that a significant issue existed due to an HFA board member being considered an official, and the BCC’s inability to issue a waiver.
 - Issuing a waiver provided a disclosure process to the contractual relationship’s provision between the advisory board member and the governmental entity.
 - Issuing a waiver would recognize an advisory board member’s ability to influence public decision making resulting from the appointment, and was limited to that narrow board on which he or she served.
- Staff recommended that for the HFA’s limited purpose, the COE issue an advisory opinion interpreting HFA members as advisory board members rather than as officials.
 - Treating HFA members as advisory board members would meet the Code’s intent.
 - Someone appointed to the HFA would be in no better position to influence any aspect of a contract between the person or his or her employer and the County.
 - The COE’s interpretation would target the actual contract that was the substance of the contractual relationship’s provision, which was the contract between the board member and the HFA.
- Another option was that the COE could enter into a memorandum of understanding (MOU) with the HFA limiting the HFA’s scope.

X.a. – CONTINUED

Responding to Commissioner Fiore’s questions, Ms. Rogers said that:

- Approximately five boards in the county had similar State statute requirements, and several of them were not under the COE’s jurisdiction. The HFA was different than pension boards since the appointing mechanism was controlled solely by State law.
- The COE was empowered to interpret the Code, and based on unique circumstances, it could endorse an advisory opinion.
- Assistant County Attorney Leonard Berger had advised that entering into an MOU would be an option; however, the same Code interpretation would be required.
- Morgan Regions Bank (bank), the HFA appointee’s outside employer, currently did not have contracts with the County.

Commissioner Fiore said that the COE was attempting to do an “end run” so that individuals could maintain outside employers who had contracts with the County.

Ms. Rogers said that instead of targeting contracts between an appointed member and the County, the appointed member was prohibited from contracting with the entity that he or she actually oversaw.

Commissioner Fiore said that:

- If the bank wanted to contract with the County, it would simply sever its relationship with the HFA board member.
- The COE was not preventing anyone from contracting with the County but was advising that the appointed member could not have certain types of relationships, sit on the HFA board, and contract with the County.

(This space intentionally left blank.)

X.a. – CONTINUED

(CLERK'S NOTE: Commissioner Farach allowed comment from Mr. Miller.)

Mr. Miller stated that it was difficult filling HFA vacant appointments since the State's statute and the County's ordinance required that board members have expertise in specific areas. He said that HFA board members were similar in function to advisory board members, and that he agreed with staff's recommendation. He added that the COE's option of entering into an MOU was also acceptable.

Commissioner Fiore commented that she preferred entering into an MOU. She expressed concern that implementing staff's recommendation would set a precedent where individuals would rather serve as advisory board members than as officials.

Ms. Rogers said that the issue with the definition of official was that aside from the lack of the waiver provision in contractual relationships, some gift law provisions did not apply to officials. She added that staff's recommendation would be specific to the HFA.

Commissioner Galo suggested that staff prepare a draft of the proposed advisory opinion.

Commissioner Harbison said that the issue was well thought through by staff and the HFA representatives. He recommended that staff pursue the methodology that they discussed today and condense it into a proposal.

Ms. Rogers stated that a proposed MOU and a proposed advisory opinion could be drafted for the COE's review.

Ms. Archer said that she supported preparing a proposed advisory opinion that was specific to the HFA.

Commissioner Harbison said that he liked the option of an MOU.

Commissioner Fiore stated that she wanted the BCC's input regarding the language's interpretation so that rules were not created that could not be found in the Code.

Commissioner Farach said that the BCC may need to meet with Mr. Berger and refine portions of the Code. He said that Mr. Miller's input was invaluable, and he asked him to continue working with Ms. Rogers.

X.a. – CONTINUED

Ms. Rogers said that staff was reluctant to enter into an MOU for the following reasons:

- Mr. Brandt, as the HFA's executive director, was a County employee who was covered under the Code.
- The HFA board members were subject to the COE's jurisdiction based on their appointment status.
- Since the board members were within the Code's jurisdiction, there would be an additional fee for the COE's services to provide potential authority.
 - Fees were determined on a case-by-case basis or on an hourly basis.
 - The hourly rate depended on whether an investigation or an advisory opinion was being sought and which staff member was utilized. Advisory opinions and inquiries were \$150 to \$200 per hour, up to \$400 per hour for an investigation, \$1,000 per hour for probable cause, and moving upwards for a final hearing.
 - Subject to BCC approval, fees could be waived given the composition of the HFA board.

Commissioners Fiore and Harbison said that they did not want to charge the HFA board.

Commissioner Farach said that the COE members could agree to waive the fees; and Ms. Rogers clarified that it would be subject to BCC approval, and that she would consult Mr. Berger regarding the COE's request.

RECESS

At 2:57 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 5:49 p.m., the meeting reconvened, and at Commissioner Fiore's request for a roll call, Commissioners Archer, Fiore, Galo, and Harbison were present.

XI. EXECUTIVE SESSIONS

Commissioner Fiore said that Commissioner Harbison would read the public reports and final orders of dismissal and the accompanying materials for C13-003, C12-015, and C12-016.

(CLERK'S NOTE: Items XI.a., XI.b., and XI.c. were presented in numerical order by complaint number.)

XI.b. C12-015

Commissioner Harbison read the public report and final order of dismissal as follows:

Complainant, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the complaint on November 19, 2012, alleging a possible ethics violation involving Respondent, Robert Margolis, Village of Wellington Mayor.

The complaint alleges that on July 22, 2012, Respondent, Robert Margolis, knowingly accepted a gift in excess of one hundred dollars (\$100) from a principal or employer of a lobbyist.

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 knowingly accept any gift with a value of greater than one hundred dollars (\$100) from any person or business entity that the recipient knows or should know with the exercise of reasonable care is a lobbyist or any principal or employer of a lobbyist.

XI.b. – CONTINUED

On November 19, 2012, the complaint was determined by staff to be legally sufficient. On October 19, 2012, the Commission on Ethics (COE) staff received copies of two (2) State of Florida quarterly gift disclosures (Form 9) filed by Respondent, Mayor of the Village of Wellington. Listed on these gift disclosure forms were four separate entries indicating that Respondent had received funds for his legal defense fund concerning a re-count for his election as Mayor, and pursuant to COE Rule of Procedure 4.1.3, a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding, a memorandum of legal sufficiency was filed, and an investigation commenced pursuant to Article V, Division 8, Section 2-260(d).

The matter was investigated and presented to the Commission on Ethics on January 10, 2013, with a recommendation that probable cause exists to believe there was a code of ethics violation. At that time, the Commission conducted a hearing. The Commission on Ethics reviewed the complaint and memorandum of inquiry and requested that staff obtain additional information, and the matter was tabled.

On February 7, 2013, a supplemental memorandum of investigation was presented to the Commission with a recommendation that probable cause exists to believe there was a code of ethics violation. However, the facts and circumstances warrant a dismissal with a letter of instruction to the Respondent. The Commission reviewed and considered the memoranda of inquiry, supplemental investigation and probable cause, recommendation of staff, as well as oral statements of the Respondent and advocate. At that time, the Commission also reviewed Article V, §2-260.3 of the Commission on Ethics ordinance. At the conclusion of the hearing, the Commission on Ethics determined that while probable cause exists in this matter, the alleged violation was inadvertent and unintentional. The Commission based this determination on the investigative report and that Respondent has voluntarily agreed to return of the prohibited gift to the donor.

XI.b. – CONTINUED

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Robert Margolis, is hereby dismissed, and a letter of instruction is to be issued in this case.

Done and ordered by the Palm Beach County Commission on Ethics in public session on February 7, 2013. Signed: Manuel Farach, Chair.

Commissioner Harbison read the letter of instruction as follows:

The above-captioned complaint against Robert Margolis, Mayor, Village of Wellington (Respondent), alleging a violation of the Palm Beach County Code of Ethics, Article XIII, §2-444(a)(1) (Gift law) was filed by Commission on Ethics Executive Director Alan S. Johnson pursuant to the procedures outlined in the Commission on Ethics Ordinance, Article V, Division 8, §2-260(b)(2). The complaint alleges that Respondent accepted a gift in excess of \$100 from a person who is a principal of a lobbyist who lobbies the Village of Wellington (the Village) in violation of the gift law.

- Facts and analysis

Respondent is the elected Mayor for the Village. As an elected municipal official in Palm Beach County, Respondent is subject to the Palm Beach County Code of Ethics.

Pursuant to gift disclosure requirements, Respondent submitted a State of Florida quarterly gift disclosure form (Form 9) indicating that he received a \$4000 gift on July 22, 2012, for his legal defense fund regarding a voter re-count in the mayoral race. It was determined through inquiry that the donor was the principal of several registered lobbyists who lobby the Village. The parties represented that an original donation was given in March, 2012, before Respondent took office on April 9, 2012, and before the donor became a principal of lobbyists in late June, 2012. The original donation was lost, and a subsequent replacement donation was tendered on July 22, 2012, after Respondent took office and the donor became an employer of lobbyists.

XI.b. – CONTINUED

• Holding

Sec. 2-444(a) – Gift law, states in relevant part:

(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.

Sec. 2-260.3 – Dismissal of complaints, states as follows:

Notwithstanding any other provisions of this division, the Commission on Ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional, or insubstantial. In the event the Commission on Ethics dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public report stating with particularity its reasons for the dismissal.

Respondent did accept a prohibited gift from a principal of lobbyists.

(This space intentionally left blank.)

XI.b. – CONTINUED

The Commission is mindful that the facts and circumstances indicate Respondent transparently filed the gift on his state quarterly gift form as required. In addition, the gift was initially intended to be given before Respondent took office and before the donor retained a lobbyist for an issue involving her property, thereby, becoming a principal. The principal did not engage in any lobbying activities with Respondent prior to the replacement donation of July, 22, 2012, and Respondent testified that he was unaware that the donor employed lobbyists other than for state government issues. Finally, Respondent voluntarily returned the prohibited portion of the gift to the donor.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this letter of instruction. The COE concludes that the alleged violation was inadvertent and unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of Ethics Complaint C12 015, along with this letter of instruction, is to serve as notice that actions taken by Respondent in accepting a prohibited gift from a principal of a lobbyist without inquiring as to the status of the donor or otherwise ascertaining that status will result in an actionable violation of the Code. Due to the unique circumstances of this transaction, the matter is appropriately addressed through this letter of instruction.

Respondent is hereby instructed to be more careful in the future to ensure that he avoid accepting prohibited gifts and to use due diligence in identifying the status of a donor, whether or not the gift is given directly or indirectly, so as to conform his activities to this letter of instruction and to the requirements of §2-444(a){l} to avoid any future enforcement action.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on February 7, 2013. Signed: Manuel Farach, Chair.

XI. – CONTINUED

XI.c. C12-016

Commissioner Harbison read the public report and final order of dismissal as follows:

Complainant, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the complaint on November 19, 2012, alleging a possible ethics violation involving Respondent, Victoria McCullough, principal of a registered lobbyist for the Village of Wellington.

The complaint alleges that on July 22, 2012, Respondent, Victoria McCullough, a principal of a lobbyist who lobbies the Village of Wellington, knowingly provided a gift in excess of one hundred (\$100) dollars to an elected official who serves the Village of Wellington.

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. A lobbyist, principal or employer of a lobbyist that lobbies the County or a municipality shall not knowingly give, directly or indirectly, any gift with a value greater than one hundred (\$100) dollars to a person who the lobbyist or principal knows in an official or employee of that county or municipality.

On December 11, 2012, the complaint was determined by staff to be legally sufficient. On October 19, 2012, the Commission on Ethics (COE) staff received copies of two (2) State of Florida quarterly gift disclosures (Form 9) filed by Robert Margolis, Mayor of the Village of Wellington. Listed on these gift disclosure forms were four separate entries indicating that Margolis had received funds for his legal defense fund concerning a re-count for his election as Mayor and pursuant to COE Rule of Procedure 4.1.3, a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding, a memorandum of legal sufficiency was filed and an investigation commenced pursuant to Article V, Division 8, Section 2-260(d).

XI.c. – CONTINUED

The matter presented to the Commission on Ethics on January 10, 2013, with a recommendation that probable cause exists to believe there was a code of ethics violation. At that time, the Commission conducted a hearing. The Commission on Ethics reviewed the complaint and memorandum of inquiry and requested that staff obtain additional information and the matter was tabled.

On February 7, 2013, a supplemental memorandum of investigation was presented to the Commission with a recommendation that probable cause exists to believe there was a Code of Ethics violation. However, the facts and circumstances warrant a dismissal with a letter of instruction to the Respondent. The Commission reviewed and considered the memoranda of inquiry, supplemental investigation and probable cause, recommendation of staff, as well as oral statements of the Respondent and advocate. The Commission also reviewed Article V, §2-260.3 of the Commission on Ethics ordinance. At the conclusion of the hearing, the Commission on Ethics dismissed the case with a letter of instruction because although there was probable cause to believe that a violation had occurred, the alleged violation was inadvertent and unintentional.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Victoria McCullough, is hereby dismissed and a letter of instruction is to be issued in this case.

Done and ordered by the Palm Beach County Commission on Ethics in session on February 7, 2013. Signed: Manuel Farach, Chair.

(This space intentionally left blank.)

XI.c. – CONTINUED

Commissioner Harbison read the letter of instruction as follows:

The above-captioned complaint against Victoria McCullough, (Respondent), alleging a violation of the Palm Beach County Code of Ethics, Article XIII, §2-444(a)(2) (Gift law) was filed by Commission on Ethics Executive Director Alan S. Johnson pursuant to the procedures outlined in the Commission on Ethics Ordinance, Article V, Division 8, §2-260(b)(2). The complaint alleges that Respondent, a principal of a lobbyist, knowingly gave a gift in excess of \$100 to a person who she knew to be an official of the Village of Wellington (the Village) in violation of the gift law.

- Facts and analysis

Respondent, Victoria McCullough, is a principal of lobbyists who lobby the Village. As such, Respondent is subject to the Palm Beach County Code of Ethics.

On July 22, 2012, Respondent gave a \$4000 donation to Village Mayor Robert Margolis for his legal defense fund regarding a voter re-count in the mayoral race. According to State law, a donation to such a legal defense fund is considered a gift, not a political contribution. At the time of the gift, Respondent was the principal of several registered lobbyists who lobby the Village. The parties represented that an original donation was given in March 2012, before Margolis took office on April 9, 2012, and before Respondent became a principal of lobbyists in late June 2012. The Respondent represented that the original donation was lost, and a subsequent replacement donation was tendered on July 22, 2012, after Respondent took office and Respondent became an employer of lobbyists. Respondent maintains that she is not a regular employer of lobbyists within the Village and retained lobbyists on a single issue involving her personal property. Respondent represented she was under the mistaken belief that the Code applied only to lobbyists and not their principals.

XI.c. – CONTINUED

- Holding

Sec. 2-444(a) Gift law, states in relevant part:

(2) No lobbyist, vendor, or principal or employer of a lobbyist that lobbies the County or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality. For the purposes of this subsection 2-444(a)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal, or other procurement opportunity that has been published by the County or a municipality.

Sec. 2-260.3. Dismissal of complaints, states as follows:

Notwithstanding any other provisions of this division, the Commission on Ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional, or insubstantial. In the event the Commission on Ethics dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public report stating with particularity its reasons for the dismissal. There is probable cause to believe that Respondent gave a prohibited gift to a municipal official.

The Respondent intended to give the gift in March 2012, prior to Margolis taking office and before she became a principal of lobbyists, and but for the fact that the original check was lost, the gift would not have been in violation of the Code. In addition, Respondent did not engage in any lobbying activities with Margolis prior to or after the replacement donation of July, 22, 2012.

XI.c. – CONTINUED

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this letter of instruction. The COE believes that the alleged violation was inadvertent and unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of Ethics Complaint C12-016, along with this letter of instruction, is to serve as notice that actions taken by Respondent in giving a prohibited gift to an official of a municipality, when she employs lobbyists who lobby that municipality, will result in an actionable violation of the Code. Respondent has agreed to voluntarily donate the gift returned by Mayor Margolis to charity. Due to the unique circumstances of this transaction, the matter is appropriately addressed through this letter of instruction.

Respondent is hereby instructed to be more careful in the future to not give a prohibited gift to municipal employees or officials of the Village when she is the principal of a lobbyist who lobbies the Village, whether or not the gift is given directly or indirectly, so as to conform her activities to this letter of instruction and to the requirements of §2-444(a)(2) to avoid any future enforcement action. This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on February 7, 2013. Signed: Manuel Farach, Chair.

XI.a. C13-003

Commissioner Harbison read the public report and final order of dismissal as follows:

Complainant, Julius F. Rucker, III, filed the above-referenced complaint on January 18, 2013, alleging a possible ethics violation involving Respondent, Richard L. Oftedal, Circuit Court Judge of the 15th Judicial Circuit in and for Palm Beach County.

While Judge Oftedal's office is in the Palm Beach County Courthouse, a circuit court judge is employed by the State of Florida and does not fall within the jurisdiction of the Palm Beach County Commission on Ethics or of the Palm Beach County Code of Ethics. Therefore, the Commission on Ethics dismissed the complaint on February 7, 2013, due to no legal sufficiency.

XI.a. – CONTINUED

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Richard L. Oftedal, Circuit Court Judge of the 15th Judicial Circuit in and for Palm Beach County is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on February 7, 2013. Signed: Manuel Farach, Chair.

(CLERK’S NOTE: The clerk added the language as printed in the public reports and final orders of dismissal and the letters of instruction.)

XII. INTERIM EXECUTIVE DIRECTOR COMMENTS

XII.a.

DISCUSSED: Ethics Awareness Month

Ms. Rogers said that:

- On February 5, 2013, the BCC had proclaimed March 2013 as Ethics Awareness month.
- Staff had joined with the Ethics Planning Council to promote events for the month.
- The public could access up-to-date information about the events on the COE’s Web site, Facebook, and Twitter pages, and the Palm Beach State College Center for Applied Ethics’ Web site.
- A follow-up request would be made that the County include the information on its Web site.

Ms. Levesque commented that Mayor Abrams had included a link to the proclamation on his Web page.

XIII. COMMISSION COMMENTS – None

XIV. PUBLIC COMMENTS – None

XV. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Manuel Farach absent.

At 6:16 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

FREQUENCY DISTRIBUTION WORKSHEET 03/07/2013

COE Candidate (Alpha Order) Frequency in Top Group

Levine, Judith	4
Lipman, Eric	4

Cullen, Steven	3
Degraffenreidt, Carol	3
Massa, Phillip	3
Meyers, Robert	3
Miller, Mark	3
Storey, Krista	3
Young, Ronna	3

Lawson, Craig	2
Merten, Dean	2
Pobjecky, Thomas	2
Smith, Ronald	2
Tracey, Amber	2
Vrod, Shari	2

Hoffman, Marissa	1
Linton, Cathy	1
Miller, Elaine	1
Moran, James	1
Morgan, Michael	1
Zacks, Paul	1

7. Academic Integrity

Cheating is defined as “acting dishonestly or unfairly in order to gain an advantage.” However, many American children and young adults seem to think of cheating as a normal, if not acceptable, action towards gaining a desired result.

Cheaters are not predominantly low-scoring, below-average students. The majority of high-school cheaters today are actually high-performing, college-bound students. And they aren’t necessarily only cheating on tests. A recent study found that while 22% of students reports having cheated at least once on a test, 43% admits to providing or receiving “unauthorized collaboration” on homework.

The continued proliferation of technology and web-based research and interaction, including the popularity of social media sites such as facebook, plays a role in today’s culture of cheating. Some students consider facebook to be one big study group, using it often to network with classmates and solicit assistance. Reliance on social media may also work to normalize the type of “virtual” cheating that looks more like helping out a classmate than smuggling in exam answers.

Unauthorized collaboration at the university level is also highly prevalent, sparking a dialogue about what constitutes cheating. According to Don McCabe, a Rutgers Business School professor, “The number of self-reported cheaters has decreased at the college level, but that merely reflects the increasing number of students who think there’s nothing wrong with borrowing work.” Claiming that the definition of cheating is changing, he states that most students view homework as a collaborative effort and that finding answers online or through friends is an example of being resourceful. Some students even argue that they should be allowed to collaborate; after all, in the post-graduate workplace, people are often encouraged to work together to maximize their resources.

Trevor Harding, a professor at California Polytechnic Institute, has documented a definite shift in students’ conception of cheating. He discovered something he calls the “technological detachment phenomenon.” Although most students agree that bringing a cheat sheet into an exam is cheating, most think it is acceptable to bring a graphing calculator with pre-programmed equations.

Study Questions:

Should students be allowed to collaborate on homework assignments? If so, under what conditions?

Under what conditions, if any, is cheating morally permissible?

X. Proposed Advisory Opinions

RQO 13-002 Lori Columbino

A municipal employee asked whether she was prohibited by the Code of Ethics from establishing a non-profit organization designed to fulfill the needs of children and vulnerable adults that police officers encounter during their service.

Staff submits the following for COE review: municipal employees are prohibited from using their official position as City police officers to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which they are an officer or director. Lending an employee's name and official title to a fundraising effort would per se constitute using their employment to specially financially benefit the organization they serve as an officer or director. Any solicitation on behalf of the non-profit organization would need to be in the employee's name without reference to their public title. This would apply directly to the employee, as well as anyone indirectly soliciting the employee's behalf.

Insofar as the gift law is concerned, employees are not prohibited from soliciting or accepting donations while maintaining a director or officer position with the charity, provided that the solicitation is made in their private capacity. If an employee solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of their government employer, the employee (or the charity if solicitations are made in the employee's name) must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

RQO 13-004 Gerri Penney

A County employee asked whether Palm Beach County Fire Rescue may hold a child passenger seat check at Fire Station 23 sponsored by the Safety Council of Palm Beach County and the law firm of Lytal, Reiter, Smith, Ivey and Fronrath.

Staff submits the following for COE review: based on the facts as submitted, the Palm Beach County Code of Ethics does not prohibit Palm Beach County Fire Rescue from partnering with public or private organizations to organize and hold child safety seat checks. Employees are not prohibited from assisting non-profit or private organizations in providing community services, so long as the employee or any other person or entity as described in §2-443(a)1-7 does not personally benefit financially from the transaction.

The COE cannot opine as to any potential benefit that may flow to a private entity appearing in conjunction with a government department, unless the facts and circumstances indicate a potential violation of the Code of Ethics.

March 8, 2013

Lori Colombino
c/o Ralph E. King, III, Esquire
2240 Palm Beach Lakes Blvd., Suite 250
West Palm Beach, FL 33409

Re: RQO 13-002
Charitable Solicitation

Dear Ms. Columbino,

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 March 7, 2013.

YOU ASKED in your submission dated February 12, 2013 whether as a police officer you were prohibited from establishing a non-profit organization designed to fulfill the needs of children and vulnerable adults that officers encounter during their service.

IN SUM, as a municipal employee you are prohibited from using your official position as a City police officer to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which you are an officer or director, REBUILD Locally (Rebuild). Lending your name and official title to a fundraising effort would per se constitute using your employment to specially financially benefit Rebuild. Any solicitation on behalf of Rebuild would need to be in your name without reference to your public title. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.

Insofar as the gift law is concerned, you are not prohibited from soliciting or accepting donations while maintaining your position with the charity, provided that you do so in your private capacity. If you solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of West Palm Beach, you (or the charity if solicitations are made in your name) must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

THE FACTS as we understand them are as follows:

You are a police officer employed by the City of West Palm Beach. It has been your personal experience that police officers often spend personal funds to obtain gifts of compassion for individuals they come into contact with in the community and that there are few, if any, organizations that serve this purpose. You would like to implement a non-profit organization, Rebuild, which would help bridge this gap.

The program you envision would provide officers with the option to request resources from your non-profit. The requested item or other benefit would be purchased by the organization and provided to the requesting officer or to the community member. The Legal Aid Society of Palm Beach County has signed on to help you create the organization.

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:

The Code prohibits officials, employees and advisory board members from using their official position to give a special financial benefit, not shared with similarly situated members of the general public, to a non-profit organization of which the official, advisory board member or employee is an officer or director. As a city officer,

lending your name and official title to fundraising efforts on behalf of Rebuild is prohibited. For that reason, so long as you are an officer or director of Rebuild, you are prohibited from soliciting donations as "Officer Colombino".

Section 2-444(a) of the Palm Beach County Code of Ethics prohibits county and municipal employees, "or any other person or business entity on his or her behalf" from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year, from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the municipality.

This provision prohibits you from soliciting funds in excess of \$100 in the aggregate from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases the City. However, §2-444(h) provides an exception to this prohibition. You are not prohibited from soliciting vendors, lobbyists, principals or employers of lobbyists who lobby the City so long as the solicitation is made on behalf of non-profit 501(c)3 organization and a detailed log is maintained. A draft *charitable solicitation log* can be found on our website at www.palmbeachcountyethics.com/Forms and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity with a pending application before West Palm Beach. Most importantly, you must take great care that solicitations accepted on behalf of REBUILD do not result in a *quid pro quo* for your "official action" as police officer. In addition, you may not use on-duty West Palm Beach staff or other municipal resources to solicit donations.

IN SUMMARY, the Code of Ethics does not prohibit you from establishing a non-profit organization. However, once established should you serve as an officer or director of the organization, you are prohibited from using your official position or title to secure donations. Furthermore, should the organization elect to solicit donations from vendors, lobbyists, principals or employers of lobbyists who sell lease or lobby the City, you must maintain a charitable solicitation log and submit it to the Commission on Ethics office within 30 days of hosting a charitable event or within 30 days of the solicitation if not related to an event.

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,

Megan C. Rogers
Interim Executive Director

MCR/gal

March 8, 2013

Gerri Penney Ph.D., EFO
Community Education Coordinator
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 13-004
Gift Law/Public-Private Partnerships

Dear Ms. Penney,

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 March 7, 2013.

YOU ASKED in your submission dated February 22, 2013 whether Palm Beach County Fire Rescue may hold a child passenger seat check at Fire Station 23 sponsored by the Safety Council of Palm Beach County and the law firm of Lytal, Reiter, Smith, Ivey and Fronrath.

IN SUM, based on the facts as submitted, the Palm Beach County Code of Ethics does not prohibit you as the Community Education Coordinator for PBCFR from partnering with public or private organizations to organize and hold child safety seat checks. In your official capacity as a Palm Beach County employee, you are not prohibited from assisting non-profit or private organizations in providing community services, so long as you or any other person or entity as described in §2-443(a)1-7 do not personally benefit financially from the transaction.

THE FACTS as we understand them are as follows:

You are the Community Education Coordinator for Palm Beach County Fire Rescue (PBCFR). PBCFR received a request from the Safety Council of Palm Beach County (Safety Council) a non-profit organization, to use the bays at Fire Station 23 (Okeechobee Blvd., near Florida's Turnpike) to hold a child passenger car seat fitting station. PBCFR works closely with the Safety Council as one of the approved county sites for these seat checks.

The Safety Council was approached by Lytal, Reiter, Smith, Ivey and Fronrath (the Firm) to assist with the seat checkup. The Firm will provide car seats to families who need them and will have staff available to assist with paperwork and advertise the event. The Safety Council will provide 2 National Highway Traffic Safety Administration (NHTSA)/Safe Kids certified child passenger seat technicians.

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) prohibits employees from using their official position or office in a manner which they know or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public for any person or entity as described in §2-443(a)1-7. Specifically, §2-442(a)7 prohibits an employee or official from using their office or official

position to benefit a non-profit or other civic organization that they serve as an officer or director and §2-442(a)4 prohibits an employee of official from using their position to benefit their outside employer. No member of the PBCFR serves as an officer or director of the Safety Council or otherwise has the type of economic or fiduciary relationship with the Safety Council or the Firm prohibited by the Code of Ethics, thus §2-443 is not implicated.

The COE cannot opine as to any potential benefit that may flow to a private entity appearing in conjunction with a government department, unless the facts and circumstances indicate a potential violation of the Code of Ethics. Where there is no financial or fiduciary conflict or a corrupt misuse of office, the Code does not prohibit such public/private partnerships.¹

IN SUMMARY, your participation and facilitation of child safety seat checks and child safety seat donations for public use as the Community Education Coordinator of PBCFR is not in violation of the Palm Beach County Code of Ethics, so long as you are not an officer or board member of the PBCSC and do not financially benefit directly or indirectly in violation of §2-443(a)(1)-(7).

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,

Megan C. Rogers
Interim Executive Director

MCR/gal

¹ RQO 10-027 (County employees are not prohibited from assisting non-profit organizations in obtaining improvements to county facilities provided the employee does not personally financially benefit from the transaction); *See also*, RQO 12-030, RQO 12-049.

XI. Palm Beach County Housing Finance Authority

RQO 13-003 Skip Miller

An attorney for the Palm Beach County Housing Finance Authority asked whether the waiver provisions for “advisory board members” applied to HFA board members where HFA appointees provide no regulation, oversight, management or policy-setting recommendations to the Palm Beach County Board of County Commissioners (BCC). Additional information was obtained during a discussion of this issue at the February 7, 2013 COE meeting.

Staff submits the following for COE review: the Palm Beach County Housing Finance Authority (HFA) is a dependent special district, independent of county or municipal government. As an independent entity, without COE action HFA members would be considered “Officials” as defined by the code. The state statute that authorizes creation of the HFA, requires that its members be appointed by the local governing body.

The Code of Ethics (the Code) provides waivers, exemptions and exceptions for advisory board members only, recognizing that an advisory board member’s ability to influence public decision making, as a result of the appointment, is limited to the narrow reach of his or her advisory board. To define HFA members as “Officials” rather than advisory board members despite the fact that HFA members perform the same function as advisory board members would result in a “manifest incongruity”. Therefore, for the purposes of code interpretation and enforcement, HFA members shall be treated as “advisory board members”.

At its February 7th, 2013 meeting, the Commission discussed the possibility of entering into an MOU with the HFA as an independent organization and including language referencing the inconsistency between members’ actual authority and their status as “Officials”. On review of the HFA ordinance, §2-188, staff determined that the County Commission amended the ordinance specifically to extend COE jurisdiction to all members of the Authority and its staff.¹ Because COE jurisdiction is provided for by ordinance, there is no basis for the COE to enter into a MOU with the HFA.

¹ §2-188. Conflict of Interest; disclosures.

March 8, 2013

Morris Miller, Esquire
PBC Housing Financing Authority
Greenspoon Marder, PA
250 South Australian Avenue, Suite 700
West Palm Beach, FL 33401

Re: RQO 13-003
Contractual Relationships

Dear Mr. Miller,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on March 7, 2013.

YOU ASKED in your email dated January 4, 2013 whether the waiver provisions for “advisory board members” applied equally to HFA board members and County appointed advisory board members where HFA appointees provide no regulation, oversight, management or policy-setting recommendations to the Palm Beach County Board of County Commissioners (BCC). Additional information was obtained during a discussion of the issue at the February 7, 2013 COE meeting.

IN SUM, the Palm Beach County Housing Finance Authority (HFA) is a dependent special district, independent of county or municipal government. As an independent entity, without COE action HFA members would be considered “Officials” as defined by the code. The state statute that authorizes creation of the HFA, requires that its members be appointed by the local governing body. The Code of Ethics (the Code) provides waivers, exemptions and exceptions for advisory board members only, recognizing that an advisory board member’s ability to influence public decision making, as a result of the appointment, is limited to the narrow reach of his or her advisory board. To define HFA members as “Officials” rather than advisory board members despite the fact that HFA members perform the same function as advisory board members would result in a “manifest incongruity”. Therefore, for the purposes of code interpretation and enforcement, HFA members shall be treated as “advisory board members”.

THE FACTS as we understand them are as follows:

You serve as the General Counsel to the Palm Beach County Housing Finance Authority Board (HFA). The HFA is a governmental entity chartered under Florida law to fund low cost housing. Its seven member board is appointed by the Board of County Commissioners (BCC). It is a totally self-supporting entity and receives no federal, state or local funding of any kind. The Authority makes available 30-year fixed rate mortgage loans at below conventional market rates to persons of moderate, middle and lower incomes for the purchase of newly constructed or existing homes.

The Authority also issues tax exempt bonds for the development or acquisition and rehabilitation of multifamily rental housing complexes; such bonds are non-recourse to the Authority, being payable only from the revenues generated by such rental housing complexes.

It has been difficult for HFA staff to find community volunteers who meet the professional qualification requirements of the state appointment guidelines but whose financial industry employers are willing to not do business with Palm Beach County. Florida statutes prohibit contractual relationships between appointed members and the HFA, but, without a waiver process, HFA members who do not have oversight over PBC departments or employees, are subject to the contractual relationships prohibition.

THE LEGAL BASIS for treating HFA members as advisory board members rather than officials may be found in §2-442, §2-443(d), its legislative intent, and Florida Appellate Court interpretation of administrative law construction.

An "Official" is defined in §2-442 in part as a member appointed by the local county or municipal governing body to serve on any advisory, quasi-judicial or any other board of the county, state, or any other regional, local, municipal, or corporate entity.¹ The HFA is legally independent; its board members are appointed by the BCC and therefore fit the definition of an "Official". The HFA ordinance was specifically amended to assure that the provisions of the Code apply to the Authority members and HFA employees. However, the HFA ordinance is silent as to the status of board members as "Officials".

Section 2-443(d) prohibits an "Official" from entering into *any contract or other transaction for goods or services with the County*. This prohibition includes transactions between the employee's government employer and his or her outside employer or business but excludes contracts between the County and an advisory board member or their outside employer so long as the following procedure is adhered to. The subject contract or transaction must be disclosed at a duly noticed public meeting of the BCC and the advisory board member's board may not provide regulation, oversight, management or policy-setting recommendations regarding the subject contract of transaction. This exemption is not currently available to HFA members as "Officials".

On February 7, 2013 this matter was generally discussed by the COE at its regularly scheduled meeting. During the public comment section of the discussion, the COE heard from HFA staff. HFA staff maintained that the role of an HFA member mirrors that of a county advisory board member. HFA staff and COE staff recommended that treating HFA members as advisory board members would better meet the intent of the Code; a person appointed to the HFA board would not be in a better position, as a result of the appointment, to influence any aspect of a contract between the board member, or his or her employer, and the county.²

In addition, the Commission discussed the possibility of entering into an MOU with the HFA as an independent organization including language in the MOU to reflect this inconsistency. On review of the HFA ordinance, §2-188, staff determined that the County Commission amended the ordinance specifically to extend COE jurisdiction to all members of the Authority and its staff.³ Because COE jurisdiction is provided for by ordinance, there is no basis for the COE to enter into a MOU with the HFA.

Florida Supreme Court and Appellate Court decisions have addressed statutory construction and interpretation issues. Where public policy is not violated, broad discretion is permitted to an administrative body interpreting the legislative intent of a provision. "In statutory construction a literal

¹ RQO 11-060 (pension board established by state statute and a legal entity distinct from the City), RQO 11-107.

² §2-258 Commission on Ethics Ordinance ("The Commission on Ethics may be empowered to review, interpret, render advisory opinions and enforce the county's code of ethics...")

³ §2-188. Conflict of Interest; disclosures.

interpretation need not be given to the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.”⁴

IN SUMMARY, based on the facts you have submitted, HFA members appointed by the BCC will be regarded as Advisory Board members for the limited purpose of Code interpretation and enforcement.

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,

Megan C. Rogers,
Interim Executive Director

MCR/gal

PROPOSED

⁴ See, e.g., *Las Olas Tower Company v. City of Ft. Lauderdale*, 742 So.2d 308 (4th DCA 1999)(A reviewing court will defer to an interpretation given a statute or ordinance by the agency responsible for its administration). *Rotemi Realty, Inc. v. Act Realty Company, Inc.*, 991 So.2d 1181 (Fla.2001)(agency interpretation of state statute barring lobbyist contingency agreements to not include real estate agents).

Ethics Awareness Month 2013

March 4, 2013 Virtual Presentation

- Inspire Integrity, Professor Corey Ciochetti, University of Denver Daniels College of Business
 - Part of the inaugural Ethics Boot Camp hosted by the Daniels College of Business at the University of Denver, Professor Corey Ciochetti discusses small ways to commit to improve character and inspire integrity in others. The Ethics Boot Camp is a stand-alone program for students beginning their business academic career during their sophomore year of study. During the camp, students evaluate and start to incorporate ethical frameworks into their lives, and engage in discussion and analysis of ethical issues alongside peers, professors, and community members. The camp consists of keynotes and breakout sessions along with a volunteer component with Goodwill Industries.
 - Available at: <http://bit.ly/YZ6wEE>

March 7, 2013

- COE General Meeting
 - The Palm Beach County Commission on Ethics meets the first Thursday of every month in the Board of County Commission Chambers, 301 N. Olive Ave. West Palm Beach. In honor of Ethics Awareness Month, the Commission looks forward to congratulating the Lake Worth High School Ethics Bowl Team. Palm Beach County will be represented by these exceptional students at the National High School Ethics Bowl competition on April 16 in North Carolina.

March 8, 2013

- Panel Discussion: Pioneering Ethics: Palm Beach County
 - Alan Johnson
 - Prior to his selection as Chief Assistant State Attorney, Alan Johnson served as the founding executive director of the Palm Beach County Commission on Ethics. In just over 3 years Mr. Johnson built a highly efficient office that authored over 250 advisory opinions and provided over 200 trainings to public officials, employees, advisory board members and members of the public. Before joining the COE, Mr. Johnson was a 17 year state prosecutor for the 15th Judicial Circuit in Palm Beach County. Mr. Johnson has also served in various capacities as a member and chairman of the Florida Bar Grievance Committee and the Unlicensed Practice of Law Committee as well as regularly serving as a volunteer youth court judge. Since 2000, Mr. Johnson has been a frequent instructor for the Florida Prosecuting Attorneys Association in areas including ethics for prosecutors, victim rights, homicide prosecution, evidence and jury selection. Mr. Johnson graduated from Columbia University in 1973 and obtained his law degree from Georgetown University Law Center in 1976.
 - Leonard Berger
 - Leonard Berger is Senior Assistant County Attorney for Palm Beach County where he has served since 1993. He is chief appellate counsel for the County Attorney's Office, and also specializes in land use law and ethics compliance for public officials and employees. Mr. Berger was one of the principal drafters of the ordinances creating the Palm Beach County Commission on Ethics and the Code of Ethics. He received his J.D. from Nova University and B.A. and M.A. from Indiana University.
 - Bruce Lewis
 - Bruce N. Lewis is the Founder and CEO of L B Limited & Associates, Incorporated, a Strategic Public Relations company located in Downtown West Palm Beach. The firm has been in business for 21 years and specializes in public involvement processes directly related to large scale public/private Development projects. Mr. Lewis is responsible for new business development, strategic planning, Construction Program Management, corporate image development, brand strategies, business model development/refinement and serves as Sr. Program/Project Manager. Mr. Lewis has a BSEE Degree with a minor in Business Administration from the University of Minnesota and is a research oriented professional.

Currently, Mr. Lewis serves as the Board Chairman of the City of West Palm Beach, Downtown Development Authority, a special Taxing District responsible for attraction/retention of both commercial and merchant business operations. Mr. Lewis served as the 2005/2006 Campaign Chairman for the United Way of Palm Beach County raising a record \$15.5 million and was the first person of color to serve in this capacity in the County's history.

- Facebook Live Question and Answer Session
 - Join us on Fridays at 1 pm on Facebook to discuss the virtual ethics presentation of the week. This week we will examine Professor Ciochetti's call to action. Tune into our Facebook page, www.facebook.com/pbccoe on Friday, March 8th at 1 pm. Our discussion topic and initial questions for consideration will be available at 12:50 pm. COE staff will begin answering questions shortly thereafter. We look forward to hearing from you.

March 11, 2013 Virtual Presentation

- Be the Ethicist Quiz, by Randy Cohen
 - For twelve years Randy Cohen wrote "The Ethicist," a weekly column for the New York Times Magazine, an experience he drew on to write his first ethics book, "The Good, the Bad and the Difference." He is currently the creator and host of "Person Place Thing," a public radio program produced by WAMC.
 - This quiz, developed for Mr. Cohen's first ethics book asks us to question how we make everyday decisions. Be sure to record your answers and view the Ethicist's response. We look forward to discussing your thoughts and opinions on these ethical dilemmas on Friday, March 15 at 1pm on Facebook.
 - Available at: <http://bit.ly/12aZZx4>

March 15, 2013

- Facebook Live Question and Answer Session
 - Join us Fridays at 1 pm on Facebook to discuss the virtual ethics presentation of the week. This week we will examine author Randy Cohen's "Be the Ethicist Quiz". Tune into our Facebook page, www.facebook.com/pbccoe on Friday, March 15th at 1 pm. Our discussion topic and initial questions for consideration will be available at 12:50 pm. COE staff will begin answering questions shortly thereafter. We look forward to hearing from you.

March 18, 2013 Virtual Presentation

- Max Bazerman: *Blind Spots, Bernie Madoff's and Ours*. In this short video, author and Harvard Professor Max Bazerman examines the ways in which people overestimate their ability to do what is right.
- Available at <http://bit.ly/WrnA4Q>

March 22, 2013

- Facebook Live Question and Answer Session
 - Join us on Fridays at 1 pm on Facebook to discuss the virtual ethics presentation of the week. This week we will examine Professor Max Bazerman's analysis of the Bernie Madoff scandal. Professor Bazerman questions why highly educated, trained professionals in the industry didn't sound the alarm sooner; why didn't the warning bells go off for fund managers or government regulators? Tune into our Facebook page, www.facebook.com/pbccoe on Friday, March 22nd at 1 pm. Our discussion topic and initial questions for consideration will be available at 12:50 pm. COE staff will begin answering questions shortly thereafter. We look forward to hearing from you.

March 25, 2013

- Ethics Matter: A Conversation with Dov Seidman, hosted by the Carnegie Council for Ethics in International Affairs.
 - This clip is an excerpt of a more detailed conversation on how moral philosophy and ethics affects corporate culture. Dov Seidman is the founder and CEO of LRN, a corporate virtue consulting firm. LRN works with international companies such as Apple, Johnson & Johnson, DuPont and 3M to develop ethical corporate cultures and inspire principled performance in business. Mr. Seidman's views on business behavior, success and corporate culture have been quoted in hundreds of media, including an in-depth profile in FORTUNE Magazine and in The New York Times, The Wall Street Journal, The Financial Times, Harvard Business Review, Charlie Rose and ABC's Good Morning America. He is a regular contributor to Forbes magazine.
- Available at <http://bit.ly/YAj3wh>

March 29, 2013

- Facebook Live Question and Answer Session
 - Join us on Fridays at 1 pm on Facebook to discuss the virtual ethics presentation of the week. This week we will examine Mr. Seidman's analysis of the evolution of institutional leadership and the influence of corporate leadership on culture. Tune into our Facebook page, www.facebook.com/pbccoe on Friday, March 29th at 1 pm. Our discussion topic and initial questions for consideration will be available at 12:50 pm. COE staff will begin answering questions shortly thereafter. We look forward to hearing from you.