



Agenda

August 15, 2013

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

Meeting will begin at 1:30 pm No Executive Session

Palm Beach County
Commission on Ethics
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Commissioners
Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Daniel T. Galo
Patricia L. Archer
Vacant

Executive Director
Steven P. Cullen

Intake Manager
Gina A. Levesque

Staff Counsel
Megan C. Rogers

Senior Investigator
Mark E. Bannon

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from July 11, 2013
- V. Proposed Settlement C12-013
- VI. Expedited Advisory Opinion – RQO 13-014
- VII. Processed Advisory Opinions (Consent Agenda)
 - a.
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 13-006
 - b. RQO 13-013
 - c. RQO 13-015
- X. Executive Session
 - a.
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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

July 11, 2013

**THURSDAY
1:33 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 - Absent

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, Esq., COE Executive Director
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Executive Director Steven Cullen, Esq., stated that a quorum existed.

Chairman Manuel Farach stated that electronic devices should be turned off or silenced. He added that anyone wishing to speak should submit a public comment card.

IV. APPROVAL OF MINUTES FROM JUNE 6, 2013

MOTION to approve the June 6, 2013, minutes. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

V. RESIGNATION OF COMMISSIONER RONALD HARBISON

Mr. Cullen stated that Commissioner Ronald Harbison had sent a June 27, 2013, e-mail message to the Commission on Ethics (COE), tendering his resignation.

Commissioner Patricia Archer said it was unfortunate that Commissioner Harbison had inadvertently made a political campaign contribution; however, she admired his willingness to promptly resign. She added that COE members were subject to the same rules and regulations as those holding other government positions.

Vice-Chair Robin Fiore said that she honored Commissioner Harbison's service to the COE and to the community. She said that she respected his decision to place the COE ahead of self-justification. She added that she appreciated working with him, and she wished him the best.

Alan Johnson, Esq., former COE executive director, said he believed that no other volunteer commissions in the county required as much member commitment as that of the COE. He said that he wanted to recognize Commissioner Harbison's dedication, adding that he was insightful and always contributed to COE matters.

Bruce Reinhart, Esq., former COE member, said that he agreed with the previous comments. He added that the community was honored to have had Commissioner Harbison as a COE member.

Commissioner Daniel Galo said that he agreed with the accolades. He stated that he would miss his input, and he wished him well.

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VI. DISCUSSION OF FLORIDA STATUTE (FS) 286.0114, RE: PUBLIC COMMENT AT MEETINGS

Mr. Cullen said that:

- Florida Statute 286.0114 was recently passed giving the public a reasonable opportunity to be heard at public meetings.
- A public comment exception existed when the COE acted in a quasi-judicial capacity.
- Public comment matters previously came before the COE when crafting article VIII., section 4, of the bylaws.
- Staff believed that the bylaw and the chair's discretion in allowing public comments fully complied with the new statute.

Vice-Chair Fiore pointed out that Chairman Farach always ensured that the public was effectively heard before votes were taken.

Chairman Farach commented that it was the COE's policy and practice to allow positive and negative public comments.

VII. COMMISSION ON ETHICS (COE) ORDINANCE INTERPRETATION AUTHORITY

Staff Counsel Megan Rogers said that:

- When discussing Request for Opinion (RQO) 13-006 at the May 2, 2013, meeting, questions were raised whether a subsidiary company would be considered the customer or client of a parent company.
- The RQO 13-006 dealt with whether an elected official could vote on a matter that would benefit a developer who owned property within a condominium association in which the official's outside business had a property management contract.
- The COE had limited authority to interpret the County's Code of Ethics (Code).

VII. – CONTINUED

- When manifest incongruity or obvious inconsistency occurred within a Code ordinance's meaning, the COE could use its interpretive authority to remedy the issue.
- Section 2-443(e)(5)g of the Code dealt with official law-enforcement overtime or extra-duty details. The language related only to certified police agency uniformed external security or extra-duty detail contracted or administered by the agency.
- Staff found that all public safety department uniformed details, such as fire rescue, were similarly contracted and administered.
- Further research and discussion with various entities enabled staff to interpret the Code and rectify the manifest incongruity.
- Section 2-442's definition of customer or client was used in misuse of office and voting conflict issues.
 - The COE's interpretation of customer or client in C11-027 fit within section 2-442's definition.
 - In C11-027, Wellington Equestrian Partners (WEP) had contracts on behalf of Equestrian Sport Productions (ESP) and vice-versa; therefore, the benefit to WEP directly transferred to ESP.
 - In RQO 13-006, a developer's various entities owned 80 percent of a condominium association's property and had brought a redevelopment project before an elected official who provided property management services to the association. The COE had opined that the developer's project was unrelated to the official's property management contract with the condominium and with the benefit received by the developer as a property owner within the association.

Vice-Chair Fiore said that the intervening entities involved in the matter did not change the fact that the official had some type of relationship with the developer.

VII. – CONTINUED

Ms. Rogers stated that the Code did not permit a more thorough review of the relationships. She added that in RQO 13-006, the official could vote on a matter that would benefit the developer; however, she would always be prohibited from voting on a matter in which her outside business received a benefit from the developer in exchange for his benefit.

Commissioner Archer said she disagreed that the official would not receive some benefit by voting on the developer's project.

Ms. Rogers said that:

- A benefit could exist; however, the Code would capture that type of voting conflict.
- The COE could refer the matter to a drafting committee for editing of the Code to cover far-reaching situations.
- The item was placed on the agenda to discuss the Code's language and how it was applied. Staff would bring back RQO 13-006 for review at the August 2013 meeting.

Commissioner Archer suggested that staff evaluate whether the Code's language could be amended to permit a more thorough review of relationships.

Vice-Chair Fiore said that a developer would benefit from contracting with a sitting official, then appearing before the official on another matter.

Commissioner Galo stated that the official's relationship was with the condominium association, and that it was separate and distinct from the developer's relationship with the association.

BOARD DIRECTION:

Chair Farach requested that staff speak with City of Boca Raton counsel, Diana Grub Frieser, Esq., then bring back RQO 13-006 with its accompanying materials.

VIII. PROPOSED SETTLEMENT C13-001

Ms. Rogers said that:

- An August 8, 2013, final hearing on C13-001 was set; however, a negotiated settlement had been reached.
- Staff believed that it was in the public's best interest to dismiss the case against Village of Wellington (Wellington) Mayor Robert Margolis with a Letter of Instruction finding that the alleged violation was inadvertent and unintentional.
- Further staff investigation of C13-001's probable cause hearing found no additional evidence of quid pro quo, or bad/corrupt intent.

Respondent's attorney, Mark Heron, Esq., stated that his client agreed with staff's recommendation to consider approving the consent order and the resulting actions.

Ms. Rogers said that:

- If the COE moved forward to a final hearing, the standard of proof of clear and convincing evidence would have to be established.
- The charges against Mr. Margolis involved accepting a gift over \$100 from a principal or employer of a lobbyist, and accepting anything of value in exchange for official action.
- As advocate, if a final hearing occurred, she would recommend dismissing the allegation that Mr. Margolis used his official position in exchange for something of value.
- The \$2,500 gifted to Mr. Margolis for his legal defense fund was returned to the donor, Neil Hirsch.

Mr. Heron clarified that the donation would be returned if the negotiated settlement were approved.

VIII. – CONTINUED

Ms. Rogers stated that:

- Mr. Hirsch and Wellington Councilman John Greene had requested a COE advisory opinion shortly after the \$2,500 gift was given in June 2012.
- After the COE's opinion that the Wellington Equestrian Preservation Alliance (WEPA) in which Mr. Hirsch served as a board member was the principal employer of a lobbyist, Mr. Hirsch immediately resigned.
- Staff believed that sufficient action had been taken.

Vice-Chair Fiore expressed concern about returning the \$2,500 to Mr. Hirsch after the COE's earlier determination that he could not make the contribution.

Ms. Rogers stated that Mr. Margolis probably would agree to a COE-recommended alternative disposition of the money. She added that the matter would not be discussed with Mr. Hirsch since the COE lacked jurisdiction regarding his actions. She explained that returning the money to Mr. Hirsch would essentially undo the prohibited gift.

Vice-Chair Fiore said that she could accept the alleged violation as inadvertent and that no further evidence was found to validate the misuse-of-office allegation; however, additional discussion was needed about returning the \$2,500.

Commissioner Archer stated that she agreed with the negotiated settlement's terms and with returning the \$2,500.

Chairman Farach stated that if staff could not prove that quid pro quo had existed, those charges should be immediately dropped. He added that apparently discussions had occurred between the complainant and Wellington's counsel; therefore, a statement regarding the charge of employing a lobbyist should be placed into the public record.

Mr. Heron requested that the negotiated settlement be considered together as a package. He said that he had filed a motion to continue the hearing. He added that if the \$2,500 remained with Mr. Margolis and he donated it to charity, he would receive a charitable contribution benefit, unlike returning the money to Mr. Hirsch.

VIII. – CONTINUED

Mr. Cullen noted that a public record would exist since most, if not all, of the evidence was posted on the COE's Web site. He said that clear and convincing evidence was a heightened burden and was relatively difficult for attorneys to prove.

MOTION to accept the negotiated settlement for C13-001 as submitted. Motion by Patricia Archer, and seconded by Daniel Galo.

Vice-Chair Fiore said that item 1 in the negotiated settlement did not reflect the actual facts. She recommended amending the second sentence to state: "The Respondent accepted a prohibited gift of \$2,500, an amount in excess of \$100."

Chairman Farach suggested that since the language tracked the Code, it should state: "In excess of \$100, specifically \$2,500."

Ms. Rogers clarified that the information regarding the \$2,500 was contained in the Letter of Instruction and in the Public Report and Final Order of Dismissal.

Vice-Chair Fiore said that she would withdraw her proposed language.

UPON CALL FOR A VOTE, the motion carried 3-1. Manuel Farach opposed. Ronald Harbison absent.

MOTION to accept the proposed Public Report and Final Order of Dismissal for C13-001 as submitted. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

MOTION to accept the proposed Letter of Instruction for C13-001 as submitted. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

Vice-Chair Fiore asked whether a COE self-initiated process existed to hold Mr. Hirsch accountable for making the \$2,500 contribution.

VIII. – CONTINUED

Ms. Rogers said that:

- Mr. Hirsch's statement to Senior Investigator Mark Bannon was that he did not know that WEPA Executive Director Mat Forrest would be considered a principal or an employer of a lobbyist for purposes of Mr. Forrest's WEPA board membership.
- Staff did not self-initiate to hold Mr. Hirsch accountable since no evidence existed that he knew that Mr. Forrest was a lobbyist, and that he was giving a prohibited gift to Mr. Margolis.
- Mr. Forrest's contention that his WEPA position did not make him a WEPA lobbyist was contested in the underlying facts of the case.

Mr. Bannon stated that although Mr. Forrest was no longer the WEPA executive director, he was still involved in the organization.

(CLERK'S NOTE: See pages 12-18 for continuation of item VIII.)

IX. PROPOSED SETTLEMENT C13-011

Respondent's representative Bruce Reinhart, Esq., said that he would waive holding a private session for the probable cause hearing, and would stipulate that probable cause existed regarding the complaint's three allegations.

Ms. Rogers said that:

- Staff had determined that Gail James knowingly accepted travel expenses valued at over \$100 from a County vendor.
- Mr. Cullen had initiated a complaint, charging that Ms. James violated the Code by accepting the travel expenses and the gift valued at over \$100 from a County vendor, and using her official position to give a special financial benefit to a nonprofit organization in which she served as a director.

IX. – CONTINUED

- Ms. James has stipulated that probable cause existed, has waived her right to a probable cause hearing, and has admitted that she violated the travel expenses and gift law prohibitions.
- Staff has dismissed the misuse-of-office charge. A recommendation was made to issue a Letter of Reprimand and require that Ms. James pay the County a \$163 fine, which was the value of the travel that she had accepted.

Mr. Reinhart said that:

- Ms. James has worked 32 years for the County's Code Enforcement Division without any disciplinary action.
- She had acknowledged receiving the required ethics training after the specific ordinance was enacted.
- Under the relevant legal standard, no requirement existed that Ms. James needed to show intent to violate the Code. It was effectively a strict liability violation.
- He was requesting a finding of unintentional and not inadvertent.

Ms. Rogers said her understanding was that Ms. James had spoken to two supervisors who had approved the travel. She added that this was a learning opportunity for County employees to recognize that Board of County Commissioners' (BCC) waivers were necessary before accepting vendor training.

Vice-Chair Fiore said she believed that the COE had changed the general title of Letter of Reprimand to a Letter of Instruction based on a violation being unintentional.

Ms. Rogers explained that the COE's power to dismiss an admitted violation came under a different section of the inadvertent and unintentional Code language; therefore, a Letter of Reprimand was used.

Commissioner Archer said it was unfortunate that Ms. James did not receive proper advice from her superiors. She said that she wanted to thank her for taking the appropriate action.

IX. – CONTINUED

MOTION to accept the negotiated settlement for C13-011. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

MOTION to accept a finding that the violation was unintentional. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

MOTION to accept the proposed Public Report and Final Order for C13-011. Motion by Robin Fiore, and seconded by Patricia Archer.

Commissioner Archer said that the words, “unintentional/intentional,” on page 2 of the Public Report and Final Order should be changed to reflect the word, unintentional.

Ms. Rogers clarified that when Chairman Farach signed the document, he would circle the word, “unintentional.”

Vice-Chair Fiore said that the \$163.96 fine on the second to last paragraph of page 2 should be \$163 to reflect staff’s recommendation.

AMENDED MOTION to include the change as discussed. The maker and the seconder agreed.

Ms. Rogers stated that she would correct the amount and reprint page 2 for Chairman Farach’s signature.

Mr. Reinhart said that he had no objection to retyping the page and having Chairman Farach sign it in duplicate at a later date.

UPON CALL FOR A VOTE, the amended motion carried 4-0. Ronald Harbison absent.

MOTION to accept the proposed Letter of Reprimand for C13-011 as submitted. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

MOTION to accept the Order for C13-011 as submitted. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

(CLERK’S NOTE: See page 18-23 for continuation of item IX.)

IX. – CONTINUED

Mr. Cullen introduced Investigator Anthony Bennett, and said that he would join the COE for executive sessions.

RECESS

At 2:58 p.m., the chair declared the meeting recessed for executive sessions.

X. EXECUTIVE SESSIONS

RECONVENE

At 4:15 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, and Galo present.

(CLERK'S NOTE: Item VIII. was continued at this time. See pages 6-9 for earlier discussion.)

Vice-Chair Fiore read the Public Report and Final Order of Dismissal:

Complainant, Mark Bellisimo, filed the above-referenced complaint on January 6, 2013, alleging a possible ethics violation involving Respondent, Robert Margolis, Village of Wellington mayor.

The complaint alleges that on or about May 17, 2012, Respondent, Robert Margolis, knowingly accepted a gift in excess of one hundred dollars (\$100) from a principal of a lobbyist. 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.

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VIII. – CONTINUED

On March 14, 2013, the complaint was determined by staff to be legally sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on May 2, 2013, with a recommendation that probable cause existed to believe that there was a Code of Ethics violation. At that time, the Commission conducted a hearing. 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 probable cause existed to believe that Respondent may have violated the Code of Ethics, and this matter was set for final hearing.

On July 11, 2013, Respondent and advocate submitted a negotiated settlement to the Commission on Ethics for approval. Under this negotiated settlement, Respondent stipulates to the facts as set forth within the Letter of Instruction. Pursuant to the Commission on Ethics ordinance 2-260.1, Public hearing procedures, the Commission has determined that the public interest would not be served by proceeding further, dismisses the complaint, and issues a Letter of Instruction to Respondent.

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 July 11, 2013. Manuel Farach, chair.

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VIII. – CONTINUED

Vice-Chair Fiore read the Letter of Instruction:

Mark Bellissimo (Complainant) filed the above-captioned complaint against Robert Margolis, mayor, Village of Wellington (Respondent), alleging violations of the Palm Beach County Code of Ethics, article XIII., §2-443(a), (Misuse of office), §2-443(b), (Corrupt misuse of office), and article XIII., §2-444(a)(1), (Gift law). The complaint alleges, in part, 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 \$2,500 gift on or about May 17, 2012, for his legal defense fund regarding a voter recount in the mayoral race. It was determined through inquiry that the donor, Neil Hirsch, served on the board of the Wellington Equestrian Preservation Alliance (the Alliance), a nonprofit civic organization. At the time the gift was given to Respondent, the Alliance was active in publicly advocating positions regarding the development of an area in the Village known as the Equestrian Preserve. The executive director of the Alliance, Mat Forrest, is a registered lobbyist for Solarsports Systems, Inc. (Solar). Forrest is an employee of Ballard Partners and has a contract to provide government affairs services to Solar.

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VIII. – CONTINUED

In Forrest's sworn statement to COE Investigator Bannon, he noted that he became involved with the Alliance through his work with Solar. Specifically, Forrest stated that Lou Jacobs, Forrest's primary contact with Solar, tasked him to create an organization to advocate for the preservation of the equestrian area of Wellington. Public records obtained by COE staff demonstrate that Forrest appeared before the Wellington Planning, Zoning, and Adjustment Board on behalf of the Alliance in regards to the development of a parcel of land within the Equestrian Preserve. The Commission has previously opined that where a person lobbying on behalf of an organization receives compensation for that representation from whatever source, that person is a lobbyist, and the organization is the principal under the Code.

Holding

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

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.

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VIII. – CONTINUED

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 accepted a prohibited gift from a principal of a lobbyist.

On May 2, 2013, the Commission on Ethics met in executive session and determined that there was probable cause to believe that Respondent may have violated the Palm Beach County Code of Ethics. Prior to the filing of the above-referenced complaint, former COE Executive Director Alan S. Johnson filed a self-initiated complaint against Respondent for accepting a gift in excess of \$100 from the principal or employer of a lobbyist (C12-015).

The Commission is mindful that the facts and circumstances indicate Respondent transparently filed the gift on his State quarterly gift form as required. The \$2,500 donation given by Neil Hirsch to Respondent's legal defense fund was reported at the same time as the prohibited donation in ethics complaint C12-015. The Commission dismissed C12-015 with a Letter of Instruction, advising Respondent that accepting a prohibited gift from a principal of a lobbyist without inquiring as to the status of the donor would result in an actionable violation of the Code.

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VIII. – CONTINUED

The Respondent has testified under oath that 1) he was unaware that the donor served on the board of the nonprofit organization at the time the gift was given and 2) that members of his campaign staff reviewed Welling lobbyist records and confirmed that Hirsch was not personally registered as a principal or employer of a lobbyist. While there is significant evidence to indicate that a compensated lobbyist, Mat Forrest, was lobbying on behalf of the Alliance, Forrest was not registered as a representative of the Alliance. Staff investigation following the Commission's probable cause determination has developed no additional evidence that Respondent had actual knowledge that Hirsch was a director of the Alliance at the time he accepted the gift or that the gift was given in exchange for official action. In addition, 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 has determined that the public interest would not be served by proceeding further. However, Respondent is again advised, as he was previously in regard to the gift in C12-015 and accompanying Letter of Instruction, that the filing of ethic complaint C13-001 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 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 proceed with great caution 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)(1) to avoid any future enforcement action. In consideration of this disposition, the Commission also dismisses the allegation that Respondent violated article XIII., sec. 2-444(e), of the Palm Beach County Code of Ethics.

VIII. – CONTINUED

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Manuel Farach, chair.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal and in the Letter of Instruction.)

(CLERK'S NOTE: Item IX. was continued at this time. See pages 9-11 for earlier discussion.)

Vice-Chair Fiore read the Public Report and Final Order:

Complainant, Steven P. Cullen, filed the above-referenced complaint on April 16, 2013, alleging that the Respondent, Ms. Gail James, violated chapter 8, article XIII., section 2-443(a)(f) and 2-444(a) of the Palm Beach County Code of Ethics when, as a Palm Beach County employee, Respondent accepted travel expenses from a vendor of the County, accepted a gift in excess of \$100 from a County vendor, and used her official position to give a special financial benefit to a nonprofit organization where she served on the board of directors.

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 Code of Ethics.

Pursuant to chapter 8, article XIII., section 2-443(f), Accepting travel expenses: No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees, and incidentals from any County or municipal contractor, vendor, service provider, bidder, or proposer as applicable. The Board of County Commissioners or local municipal governing body, as applicable, may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the County or municipality, as applicable, is a member if the travel is related to that membership.

IX. – CONTINUED

Pursuant to chapter 8, article XIII., section 2-444(a), Gift law: 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.

Pursuant to chapter 8, article XIII., section 2-443(a), Misuse of office: An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public for any of the following persons or entities:

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

On April 26, 2013, the complaint was determined by staff to be legally sufficient. On July 11, 2013, the Respondent stipulated to probable cause, and 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.

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IX. – CONTINUED

According to the negotiated settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admits to the allegations contained in counts one and two of the complaint that she violated §2-443(f) and §2-444(a) of the Palm Beach County Code of Ethics. Respondent agrees to accept a Letter of Reprimand and to pay a total of one hundred sixty-three dollars in fines. Count three is dismissed. Pursuant to the Commission on Ethics Ordinance §2-260.1, Public hearing procedures, the Commission finds that the violation was unintentional. As to counts one and two, the Commission assesses a fine of one hundred sixty-three dollars, and the Respondent has been issued a Letter of Reprimand.

Therefore, it is:

Ordered and adjudged that this matter is concluded upon acceptance of the Letter of Reprimand and proof of payment of the aforementioned fine in the amount of \$163.00.

Done and ordered by the Palm Beach County Commission on Ethics in public session on this 11th day of July, 2013. Manuel Farach, chair.

Vice-Chair Fiore read the Order:

In addition to a Letter of Reprimand imposed by the Commission on Ethics, a \$163.00 fine has been imposed. Therefore, it is hereby:

Ordered and adjudged that the Palm Beach County Board of County Commissioners shall have and recover from the Respondent, Gail James (Vorpapel), the sum of \$163.00. Said sum is to be made payable to the Board of County Commissioners in the form of a certified check or money order and to be paid within 30 days of the date of this Order. Said payment shall be sent to the Palm Beach County Commission on Ethics, 300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401.

IX. – CONTINUED

Pursuant to article V., division 8, §2-260.1(g), this Order may be enforced by application to any circuit court of the State of Florida, which shall have jurisdiction to order Respondent to comply with an Order of the Commission on Ethics.

Done and ordered by the Palm Beach County Commission on Ethics in public session on the 11th day of July, 2013. Manuel Farach, chair.

Vice-Chair Fiore read the Letter of Reprimand:

Dear Ms. James,

When the Commission on Ethics met in executive session on March 1, 2013, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically §§2-443(a), (b), and (c). On July 11, 2013, you waived your right to a probable cause hearing, stipulated to probable cause, and admitted to violating §2-443(f) and §2-444(a) of the Palm Beach County Code of Ethics. The settlement agreement in this case provides for you to accept this public reprimand.

Chapter 8, article XIII., section 2-443(f), Accepting travel expenses. No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidental from any County or municipal contractor, vendor, service provider, bidder or proposer as applicable. The Board of County Commissioners or local municipal governing body, as applicable, may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the County or municipality, as applicable, is a member if the travel is related to that membership (emphasis added).

IX. – CONTINUED

Chapter 8, article XIII., section 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. Food and beverages consumed at a single setting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, §112.3148, Florida Statutes, and the Florida Administrative Code as may be amended.

The facts are as follows:

You are a senior code enforcement officer for Palm Beach County. In October of 2011, the Palm Beach County Board of County Commissioners entered into a contract for services with Federal Property Registry Corporation (FRPC). Vacant Property Registry (VPR) is a wholly-owned subsidiary of FRPC. FRPC is a vendor of Palm Beach County. Specifically, the County contracts with FRPC/VPR to track foreclosed homes, requiring that within 10 days of foreclosure, the lender must pay \$150 to list the property with the company and provide contact information for the bank and a local property maintenance contact. In your official position, you are the County liaison with FRPC and VPR.

IX. – CONTINUED

On January 22, 2013, you were contacted by Thomas Darnell, managing director of VPR, and invited to attend a sales meeting and training in Melbourne, Florida. After seeking and obtaining your supervisor's approval, you attended the training event and accepted travel expenses including a hotel stay and dining costs totaling \$163.96. The Palm Beach County Code of Ethics expressly prohibits employees and officials from accepting travel expenses from a County vendor unless the travel is waived by the Board of County Commissioners. While your travel on County time was approved by your supervisor, you accepted travel expenses from a County vendor in violation of the Code of Ethics. Furthermore, County employees are prohibited from accepting anything of value in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases, or lobbies Palm Beach County.

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

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public employee, 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 employees.

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.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order, the Order, and the Letter of Reprimand.)

(CLERK'S NOTE: The numeric order of the agenda was restored.)

X. - CONTINUED

X.a. C13-010

Vice-Chair Fiore read the Public Report Finding No Probable Cause and Final Order of Dismissal:

Complainant, Patricia Dervishi, filed the above-referenced complaint on April 18, 2013, alleging a possible ethics violation involving Respondent, Susan Whelchel, mayor, City of Boca Raton.

The complaint alleges that Mayor Whelchel failed to disclose a conflict of interest concerning a business relationship that existed between developers of the Archstone Palmetto Park building project and Whelchel Partners, a commercial real estate firm in which her children are principals, prior to voting on matters as a member of the Boca Raton Community Redevelopment Agency (CRA) regarding this project on at least two (2) occasions, as required, in violation of sec 2-443(c), Disclosure of voting conflicts, of the Palm Beach County Code of Ethics. The complaint further alleged that the actions of Respondent by voting on these matters was also in violation of sec. 2-443(a)(3), Misuse of public office or employment, giving a prohibited special financial benefit to Whelchel Partners, and to her children as principals of this business.

Pursuant to chapter 2, article V., division 8, § 2-258(a), of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics.

On May 3, 2013, the complaint was determined by staff to be legally sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on July 11, 2013. At that time, the commission conducted a hearing. The commission reviewed and considered the Memoranda of Inquiry, Investigation, and Memo of No Probable Cause, the recommendation of staff, as well as the oral statement of the advocate. At the conclusion of the hearing, the Commission on Ethics found no probable cause exists, and the complaint was dismissed.

X. - CONTINUED

X.a. – CONTINUED

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Susan Whelchel, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Robin N. Fiore, vice-chair.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Final Order of Dismissal.)

X.b. Complaint (C) 13-013

Vice-Chair Fiore read the Public Report and Final Order of Dismissal:

Complainant, William Cooley, filed the above-referenced complaint on June 17, 2013, alleging a possible ethics violation involving the Town of Palm Beach.

The Respondent listed is the Town of Palm Beach, a governmental entity. The Commission on Ethics has jurisdiction over all County and municipal officials, employees, and advisory board members individually. Among other reasons, the Commission on Ethics does not have jurisdiction over a municipal government as an entity.

Therefore, the Commission on Ethics dismissed the complaint due to no legal sufficiency.

Therefore, it is:

Ordered and adjudged that the complaint against the Town of Palm Beach is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Manuel Farach, chair.

X. – CONTINUED

X.b. – CONTINUED

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Office of Program Policy Analysis and Government Accountability (OPPAGA) Update.

Mr. Cullen stated that the OPPAGA team had collected additional information and expected completion of their field work in July 2013. He added that the team anticipated a final report in August 2013.

XI.b.

DISCUSSED: Memorandum of Understanding (MOU).

Mr. Cullen said that an MOU was reached with the Delray Beach Downtown Development Authority to bring it under the COE's jurisdiction. He said that the MOU's paperwork had been completed, and the matter would be presented to the BCC for final approval at its July 16, 2013, regular meeting. He added that the MOU would cover collection of fees for services performed.

XI.c.

DISCUSSED: Commission on Ethics Web Site Update.

Mr. Cullen stated that staff had met with the County's Web engineers to develop and place an interactive e-book format and some analytics on the COE's Web site. He said that the analytics would determine what Web site information was most frequently accessed. He added that the project would take several months to complete.

XI. – CONTINUED

XI.d.

DISCUSSED: Commission on Ethics Training.

Mr. Cullen commented that staff was preparing a new comprehensive video training module, and that the COE members had been e-mailed an outline of proposed topics. He said that the training may exceed eight hours; therefore, staff considered taping the presentation in multiple segments. He stated that the videos, the Code, and various rules would also be provided to the commissioners.

XII. COMMISSION COMMENTS

XII.a.

DISCUSSED: Newly Relocated Commission on Ethics Offices.

Commissioner Archer commented that she liked the new COE offices, and that they were conveniently located.

XI.b.

DISCUSSED: Commission on Ethics Training Manual.

Commissioner Archer said that she had reviewed a written copy of the revised COE training document, and that all topics were thoroughly covered. She added that she looked forward to reviewing the video training module as well.

Mr. Cullen said that he had spoken with Palm Beach County television Channel 20's staff, and that they were ready to begin the video production.

XII. PUBLIC COMMENTS – None

(This space intentionally left blank.)`

XIV. ADJOURNMENT

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

At 4:46 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

Negotiated Settlement

In Re: **Marlene Ross**

C12-013

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

1. Respondent, Marlene Ross, believes it to be in her best interest to avoid the expense and time of litigation in this matter and desires to resolve the issues contained in the probable cause finding by the Commission. Accordingly, Respondent admits that the allegations contained in the complaint as to Count 1, *Corrupt misuse of official position*, if true, could reasonably create a perception of "corrupt intent".
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to dismiss Count 2 of the Complaint, *Corrupt misuse of official position* and impose a \$500 fine as prescribed under section 2-448(b) of the Palm Beach County Code of Ethics.
3. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to section 2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
4. This Proposed Settlement Agreement embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions or obligations other than those contained in this Proposed Settlement Agreement.
5. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that she is doing so freely, voluntarily and without duress; that she is competent to enter this agreement; that she has been given the opportunity to review this Proposed Settlement Agreement with an attorney; and that she has fully and completely read and understands the terms and conditions herein.
6. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
7. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
8. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS**.

Kai Li Fouts, Esquire
Volunteer Advocate

Date

Marlene Ross, Respondent

Date

Scott Richardson, Esquire

Date

PUBLIC REPORT AND FINAL ORDER

COMPLAINANT, Terry Aperavich, filed the above-referenced COMPLAINT on October 4, 2012, alleging possible ethics violations involving RESPONDENT, Marlene Ross, City of Boynton Beach Commissioner. The COMPLAINT alleges two Code of Ethics violations:

COUNT 1 alleges that on or about July 7, 2011 and September 3, 2011, RESPONDENT submitted false correspondence to Interim Boynton Beach City Manager, Laurie LaVerriere, regarding a City of Boynton Beach (the City) investigation into alleged lobbying activities of David Katz, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

COUNT 2 alleges that on or about January 3, 2012, RESPONDENT nominated Katz to serve on the City Financial Advisory Committee (FAC) to prevent the exposure of certain photographs of a compromising nature that would cause her embarrassment, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

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 omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

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

Based upon the filing of a sworn COMPLAINT, and pursuant to COE Rule of Procedure 4.1.3, a preliminary inquiry was commenced. Although it was determined that the initial COMPLAINT was NOT LEGALLY SUFFICIENT, after obtaining sworn statements from material witnesses and documentary evidence during the inquiry, sufficient

¹ Article V, Division 8, section 2-258(a). *Powers and Duties*. The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

competent evidence was obtained to warrant a legally sufficient finding. Thereafter, a MEMORANDUM OF LEGAL SUFFICIENCY was entered on November 15, 2012, a COMPLAINT was filed on November 19, 2012 by Alan Johnson, Executive Director of the COE, and an investigation was commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the COE on December 6, 2012, with a recommendation that PROBABLE CAUSE be found that Code of Ethics violations occurred. At that time, the COE held a hearing in the matter and found that PROBABLE CAUSE existed to believe that RESPONDENT violated the Code of Ethics. The COMPLAINT was subsequently set for final hearing before the COE on March 21, 2013. Subsequently, on August 15, 2013 the COE ADVOCATE and RESPONDENT submitted a NEGOTIATED SETTLEMENT to the Commission for approval. RESPONDENT stipulates to the facts and circumstances as contained in this PUBLIC REPORT AND FINAL ORDER.

The facts as to Count one are as follows:

In July, 2011, the City of Boynton Beach (the City) was conducting an investigation into alleged lobbying activity by David Katz regarding a towing contract with the City. At the time, the City had its own lobbyist ordinance which has subsequently been withdrawn and replaced with the Palm Beach County Lobbyist Registration Ordinance. Respondent, a sitting City Commissioner, was asked by the City Manager, pursuant to the City investigation, whether Katz had lobbied her regarding the towing contract issue. Katz prepared a letter stating that he had never lobbied Respondent and Respondent signed the letter on July 7, 2011. Additionally, Respondent was asked by the City Manager to confirm the contents of the letter and did so in an email on September 3, 2011. She stated in the email that Katz had never lobbied her. As a result, Katz, who was fined \$750 for violating the City Ordinance by lobbying other officials, was not fined, exposed or otherwise sanctioned for allegedly lobbying Respondent. According to the City Manager, had Respondent been truthful and forthcoming, Katz would "very possibly" have received additional fines for lobbying Respondent because there is a \$250 penalty per incident.

Subsequently, in August, 2012, a complaint was submitted to the Public Integrity Unit of the Office of the State Attorney (SAO) alleging that Katz had harassed, intimidated and pressured her into falsifying the letter and email to the City Manager. In a sworn statement to SAO investigators, and in documents submitted to the SAO investigators at their request, Respondent cooperated and candidly acknowledged that Katz had in fact lobbied her regarding the subject matter of the City investigation and that she had submitted false information to the City Manager. Respondent alleged that Katz had extorted her through his aggressive and harassing actions and that she was in fear that Katz was in possession or had knowledge of compromising photographs and that he would publish or otherwise use his knowledge of these pictures to negatively impact her reputation and political career. Respondent's relationship with Katz was longstanding and included his active participation in her campaigns for City Commissioner between 2007 and 2011. The only public statement made by Katz implying the existence of inappropriate photographs was made at a City Commission meeting on September 4, 2011, approximately one year after the submission of false statements by the Respondent.

The basis of this COMPLAINT was derived through a State Attorney Public Integrity Unit (PIU) investigation which began because Respondent came forward and cooperated with the State Attorney's Office. Respondent admitted the above acts. Additionally, although Respondent alleged that Katz extorted her by fear, harassment and intimidation, the PIU investigative report found that Respondent had voted against Katz's interests on a number of occasions. Pursuant to the Boynton Beach ordinance in effect at the time, a "lobbyist" was defined as ". . . any Person who is employed and receives payment, or who contracts for economic consideration, for the purpose of Lobbying on behalf of a Principal." "Lobbying" was defined as ". . . seeking to influence the decision of any City Commissioner . . . with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the . . . City Commission. . ." Respondent did not know whether Katz was employed by or receiving payment from any principal. In addition, Respondent was relying upon the opinions of others that Katz was lobbying. When Respondent gave her statement to the State Attorney, she did not appreciate the specific definition of the term "lobbyist." She should have used the word "advocate."

According to the NEGOTIATED SETTLEMENT and based on the facts as set forth in the FINAL ORDER, RESPONDENT admits that to the allegations contained in count one of the COMPLAINT, that she violated §§2-443(b) of the Palm Beach County Code of Ethics., could lead to a perception that there was a corrupt intent. RESPONDENT agrees to pay a Five Hundred (\$500) Dollar fine. Count two is DISMISSED. Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission finds that the violation was (intentional/unintentional).

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon the payment of the aforementioned Five Hundred (\$500) Dollar fine.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 15th day of August, 2013.

Palm Beach County Commission on Ethics

By:

Manuel Farach, Chair

In Re: Marlene Ross

C12-013

ORDER

As part of the Negotiated Settlement, the Commission on Ethics imposes Five Hundred (\$500) Dollar fine. Therefore, it is hereby:

ORDERED AND ADJUDGED that The Palm Beach County Board of County Commissioners, c/o the Palm Beach County Commission on Ethics, located at 300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401, shall have and recover from the Respondent, Marlene Ross, the sum of \$500. Said sum is to be made payable to the Board of County Commissioners in the form of a certified check or money order no later than September 13, 2013.

Pursuant to Article V, Division 8, §2-260.1(g), this Order may be enforced by application to any Circuit Court of The State of Florida, which shall have jurisdiction to order Respondent to comply with an Order of the Commission on Ethics.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in Public Session.

Signed on the 15th day of August, 2013.

Manuel Farach, Chairman



Palm Beach County Commission on Ethics

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

Executive Director
Steven P. Cullen

July 26, 2013

Robert Weisman, County Administrator
Palm Beach County
P.O. Box 1989
West Palm Beach, FL 33401

Re: RQO 13-014
Nepotism

Dear Mr. Weisman,

Your request for an advisory opinion has been received and reviewed. Because of the potential time deadlines regarding this matter, staff has treated the request as an expedited response under Rule of Procedure 2.6. Pursuant to Rule of Procedure 2.5 c), the advice and guidance of the COE Chair has been received. The opinion rendered is as follows:

YOU ASKED whether the Code of Ethics anti-nepotism provision prohibits your son from accepting an advertised position as Assistant Director of the Traffic Engineering Division for Palm Beach County.

IN SUM, §2-445 of the Code prohibits a public official, as defined in the law, from employing, appointing, promoting or advancing their relative. You are a public official in whom, by law, rule or regulation, is vested the authority to employ all personnel under the jurisdiction of the Palm Beach County Board of County Commissioners (BCC). Delegation of these duties to County department heads or other county staff does not divest you of your authority regarding hiring for the purposes of the anti-nepotism provision. Accordingly, your relative, as "relative" is defined by the ordinance, may not accept a position within the jurisdiction of your office so long as you serve as County Administrator.

THE FACTS as we understand them are as follows:

You are the County Administrator for Palm Beach County. Your son has applied for the job of Assistant Director of the Traffic Engineering Division of the County Engineering Department (ADT position). This position is in your line of supervision, but 5 levels removed from your direct supervision. It is anticipated that the ADT position will be supervised by a registered engineer manager, division director, deputy county engineer, county engineer and deputy county administrator. In addition to these procedural protections, this position requires specific and substantial technical qualifications for hiring. If your son was to receive an employment offer, this decision would be made at a level no higher than the county engineer. However, you note that if an employment offer were to be made and the department wished to make a salary offer of more than 10% above the minimum grade for the position, as County Administrator you would have the right to approve such an offer. You advise that should such a

situation occur, you would assign that responsibility to the Deputy County Administrator in conjunction with the advice of the Human Resources and Engineering Departments.

Chapter 2, Article II, Section 2-20 of the Palm Beach County Code provides: "The county administrator shall be the chief administrative officer of the county..." As such, he shall: "Except as otherwise provided by the charter, state constitution or state law select, employ, appoint and supervise all personnel and fill all vacancies, positions or employment under the jurisdiction of the board of county commissioners..." Article II, Section 2-20 (1). Article IV, Section 4.2 of the County Charter provides: "The county department heads, with the exception of the county attorney, internal auditor and initially the fire/rescue administrator, shall be appointed by the county administrator, with the advice and consent of the board of county commissioners and shall be responsible to the county administrator."

The County Charter calls for the creation of a personnel system based on the merit system principle.¹ The County merit system provides extensive regulatory requirements for employment. Under the merit system, the county administrator does not engage in the hiring, firing or direct supervision or evaluation of personnel below the level of department director. While the ADT position is "at will" and not subject to merit rule procedures, it is the County's practice to follow identical hiring guidelines. During your tenure as county administrator, you have not previously engaged in hiring, firing or direct supervision of any position below the level of department head.

You understand that this position was advertised in accordance with regular County procedure. Applicant qualifications were reviewed by the Human Resources Department independently of the Engineering Department and Administration. Upon review, 16 applicants were deemed qualified for interviews and provided to the Traffic Engineering Division Director for his evaluation. At the time of your submission, your son has met these minimum qualifications for interview and his name has been forwarded to the Division Director for further assessment in conjunction with HR procedure.

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 2-441. Title; statement of purpose.

The purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326. This code shall *not be construed to authorize or permit any conduct or activity that is in violation of Florida Statutes, ch. 112, pt. III.* (emphasis added)

Section 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official.

¹ Section 2.4.

- (1) For the purposes of this section, “official” means any official or employee in whom is vested the *authority by law, rule, or regulation* or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.
- (2) For the purposes of this section, “relative” means spouse, parent, *child*, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. (emphasis added)

Section 2-445 of the Palm Beach County Code of Ethics (the Code) is identical to the Anti-nepotism provision in the Florida Code of Ethics.² These provisions prohibit an “official” from the following: 1) appointing, employing, promoting, or advancing his “relative” (defined to include one’s child), and 2) advocating the appointment, employment, promotion or advancement of his relative. Similarly, both the Code and Florida statutes define an “official”, to include an employee who is “vested the authority by law, rule or regulation” to appoint, promote or advance individuals within their agency.

In your submission to COE staff you included an informal advisory opinion prepared by the Florida Commission on Ethics. In 2006, you asked the Florida COE whether your daughter was prohibited by the state anti-nepotism statute from accepting a position with Palm Beach County Fire Rescue. There, General Counsel to the Florida Commission on Ethics opined that your daughter was not prohibited from accepting employment with Palm Beach County Fire Rescue provided that you did not advocate her hiring because the Fire-Rescue Administrator possessed the authority to hire firefighters and that authority flowed from a resolution of the BCC rather than from your office.³

The Florida Commission on Ethics has consistently opined that while an administrator or elected official may have delegated a portion of his or her duties over the hiring or advancement of employees, that delegation does not divest the official of his or her authority regarding hiring employees for the purposes of the anti-nepotism prohibition.⁴ From the information you have provided to us, specifically Chapter 2, Article 2, §2-20 of the Palm Beach County Code, it appears that unlike the facts presented your previous request, you have ultimate statutory authority over the hiring of employees within the

² Fla. Stat. 112.3135

³ CEO 93-11 (wife of a county commissioner was not prohibited from being promoted within the county’s solid waste department because it was the county manager who held the promotional authority rather than the county commission as a collegial body), *see also* CEO 02-11 (promotion of brother of the Director of the Florida Highway Patrol (FHP) was not prohibited, Executive Director of agency rather than brother/Director was the public official vested with the authority to make the appointment).

⁴ *Morris v. Seely*, 541 So. 2d 659, 661 (1989)(the plain meaning of the anti-nepotism prohibits a sheriff from promoting or appointing a relative even if he abstains from decision-making or advocacy of any kind); CEO 91-27 (Delegation by City Manager of his duties in the promotion or advancement process does not divest the City manager of his authority; police officer may not be promoted or advanced as long as his first cousin served as City manager); CEO 90-11 (son of a city manager could not be hired by a department head under the city manager, since the city charter made the city manager responsible for the appointment, suspension, or removal of all city employees); CEO 89-46 (sheriff may not hire his nephew when the county sheriff’s office assumes the provision of law enforcement serves formerly provided by a city police department); CEO 96-5 (City commissioner prohibited from appointing son to advisory board of the City’s CRA; city commission had jurisdiction or control over the appointment and over the development agency); Op.Att’y Gen.Fla 73-75 (board of county commissioners vested with jurisdiction with respect to employment the anti-nepotism statute prohibits employment of relatives); *see also* Op.Att’y Gen.Fla 73-347, Op.Att’y Gen.Fla 77-130, Op.Att’y Gen.Fla 83-13, Op.Att’y Gen.Fla 83-81, and Op.Att’y Gen.Fla 85-35, CEO 92-62, CEO 94-39, CEO

jurisdiction of the BCC, even though a significant and substantial portion of your role in that process has been delegated.⁵ Therefore, we find that your son may not accept the ADT position so long as you serve as County Administrator.

In reaching our conclusion, we are mindful of the many degrees of separation between your office and the available position advertised by the County. Additionally, you have not promoted nor advocated your son's employment, and have properly sought guidance when confronted with a question. You have also maintained appropriate separation from the matter, and have also suggested a mechanism (delegation) to distance yourself from the possible eventuality that your son would be offered the position and the department would seek to make a salary offer in excess of 10% above the minimum grade. We are also aware that the anti-nepotism law as applied creates a barrier to public service in Palm Beach County for your family members that may otherwise be qualified to serve.⁶ However, absent clear guidance from a court or the Florida Commission on Ethics to the contrary, we can only conclude that your powers and responsibilities as designated by the County Code are valid, enforceable, and in full force and effect. The powers and responsibilities you have create an issue as a matter of law, and neither the multiple levels of separation created by other rules or practices, nor delegation of these powers impact the applicability of the anti-nepotism requirements.

IN SUMMARY, based on the facts and circumstances provided, it is the opinion of the Palm Beach County Commission on Ethics that the anti-nepotism provision of the Code prohibits the employment of the son of the County Administrator to a position within the County Administrator's oversight.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted.

Please feel free to contact me at 561-355-1937 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen
Executive Director

SPC/mcr/gal

⁵ Chapter II, Article 2, §2-20 *County Administration* provides that the county administrator shall be the chief administrative officer of the county and except as otherwise provided by the charter, state constitution or state law shall "select, employ, appoint and supervise all personnel and fill all vacancies, positions or employment under the jurisdiction of the board of county commissioners.

⁶ To be clear, the anti-nepotism law addresses only appointment, employment, promotions and advancement. See Op.Att'y Gen.Fla 73-397 (City not prohibited from hiring a police woman who was the daughter of a patrolman who at times would supervise his daughter; patrolman was not vested with the authority to appoint, employ or promote officers).

IX Proposed Advisory Opinions

RQO 13-006: Diana Grub Frieser

A municipal attorney asked whether an official who owns a property management company that provides services to a condominium association (COA) is prohibited from participating or voting on a matter that may financially benefit an investor whose family and/or business entities own a significant percentage of the property within the COA (the Property).

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 business or a customer or client of their outside business, not shared with similarly situated members of the general public. Where entities are “effectively interchangeable in terms of identity or purpose” an official is prohibited from using their official position to give a special benefit to those entities. The COA was not created by the Investor but is an entity established prior to his purchase of units within the Property. The COA was established in accordance with and governed by Florida law for the sole purpose of ongoing operation and maintenance of the Property. The Investor is neither the applicant nor the developer of the Project, but has an interest in the underlying property for the unrelated proposed Project. Based on the facts presented there is an insufficient nexus between the Investor, the COA and the issue coming before the City Council for the official to be prohibited from voting on this matter.

RQO 13-013: Major Christopher Smith

A municipal police major asked whether Jupiter Police Department (JPD) officers were prohibited by the Code of Ethics from living in government owned residential property within the jurisdiction of the JPD in an attempt to diminish potential crime and quality of life issues created by large tracts of abandoned property.

Staff submits the following for COE review: based on the facts you have submitted, where a municipal employee is assigned additional duties, in his or her official capacity, additional compensation or value provided to the employee from his or her public employer is not a prohibited or reportable gift.

RQO 13-015: Jon Van Arnam

A Palm Beach County employee asked whether the anti-nepotism provision prohibits his fiancé from continuing to work for Palm Beach County and if her continued employment is not prohibited whether the anti-nepotism provisions exclude her from receiving any promotion or advancement while he serves as an Assistant County Administrator.

Staff submits the following for COE review: §2-445 of the Code prohibits a public official, as defined in the law, from employing, appointing, promoting or advancing their relative. The anti-nepotism provision does not require the discharge of a person who becomes a relative or whose relative takes a higher position after the person’s employment. Based on the facts provided, it appears the Assistant County Administrator does not exercise control over promotion or employment within the department where his fiancé works. So long as he does not advocate her promotion in the future, she would not be precluded by the ordinance from accepting a superior position with the County.

August 16, 2013

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

Re: RQO 13-006
Voting Conflicts

Dear Ms. Grub Frieser,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and tabled the matter for further review on May 2, 2013. The COE rendered its opinion at a public meeting held on August 15, 2013.

YOU ASKED whether an official who owns a property management company that provides services to a condominium association (COA) is prohibited from participating or voting on a matter that may financially benefit an investor whose family and/or business entities own a significant percentage of the property within the COA.

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 business or a customer or client of their outside business, not shared with similarly situated members of the general public. Where entities are "effectively interchangeable in terms of identity or purpose" an official is prohibited from using their official position to give a special benefit to those entities. However, based on the facts presented there is an insufficient nexus between the Investor, the COA and the issue coming before the City Council for the official to be prohibited from voting on this matter.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Boca Raton (the City). An elected official and her husband own a property management company (Management Company) that provides services to a residential community in Broward County (the Property). The overall operation of the Property is the responsibility of a master condominium association (COA), which contracts with the Management Company. The COA is managed by an independent board elected by condo owners. The Property was built in the mid-eighties. The original developer relinquished control of the COA pursuant to F.S. 718.301(4) sometime in the past. The board of directors is responsible for administration of the COA and is elected by the unit owners of the Property. Several years ago a local Investor (Investor) purchased all but 200 of the 1600 units on the Property. The Management Company has provided \$24,000 in service to the COA over the past 24 months.

In addition to the Property, the Investor has extensive real property investments in the City. An unrelated developer may propose a redevelopment project located in the City ("Project"). The Project is unrelated to the COA. The Investor is neither the applicant nor the developer of the Project, but has an interest in the underlying property for the proposed Project. The approval or denial of the Project will result in a financial benefit or loss to the developer and also to the Investor.

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

Sec. 2-442. Definitions.

Customer or Client means any person or entity to which an official or employee's outside employer 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).

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

§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 a customer or client of their outside business. 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).

The official's outside business has supplied in excess of \$10,000 worth of goods or services to the COA during the previous 24 months. Accordingly, the COA is a customer or client of the elected official's outside business. The secondary question presented to the COE is whether an official is prohibited from voting on a matter that would benefit an investor whose various business entities own a significant percentage of the property within the COA.

Under the facts presented to the COE in complaint C11-027, a member of a municipal advisory board substantially participated in board discussion of an application submitted by a wholly-owned subsidiary of a

customer or client of the board member's outside business. The directors and managing members of the parent company and subsidiary were identical. Based on the relationship between the board member's client and the applicant, the Commission determined that the advisory board member was prohibited from participating or voting on the matter even though he did not directly provide goods or services to the entity seeking board approval. Furthermore, the COE concluded that "where entities are effectively interchangeable in terms of identity or purpose" an official, employee or advisory board member is prohibited from using their official position to give a special financial benefit to those entities.¹

Unlike the scenario presented to the COE in C11-027, there is an insufficient nexus between the COA, the Investor and the proposed project to prohibit your client from voting on this matter. The COA was not created by the Investor but is an entity established prior to his purchase of units within the Property. Moreover, the COA was established in accordance with and governed by Florida law for the sole purpose of ongoing operation and maintenance of the Property. While the Investor and his entities own a significant portion of the available condominium units there are other, unrelated property owners who similarly benefit from the services provided by the COA. Most importantly, the COA is not involved in any way in the Boca Project and has no interest in the Project. In reaching our conclusion we are mindful that §286.012, Florida Statutes, requires elected officials to vote on matters where there is no evidence of a financial conflict or other misuse of office.

That being said, the official must keep in mind that §2-443(b) *Corrupt misuse of official position* prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for him or herself or *anyone else*. Similarly, the Code prohibits an official from using their public position to give a special financial benefit to themselves, their spouse or their outside business. Voting on a matter in exchange for future favor or other benefit is prohibited by the Code. Based on the information you have provided there are no additional facts and circumstances provided here to indicate a corrupt misuse or quid pro quo.

IN SUMMARY, Based on the facts you have submitted, the Official is not prohibited from voting or participating in this matter.

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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

Attachments

SPC/mcr/gal

¹C11-027 Letter of Reprimand

From: [Koehler, Joshua](#)
To: ["Megan Rogers C."](#)
Cc: ["SCullen@palmbeachcountyethics.com"](mailto:SCullen@palmbeachcountyethics.com); [Frieser, Diana Grub](#); [Hamilton, Joni](#)
Subject: RE: proposed RQO 13-006
Date: Thursday, April 25, 2013 1:08:59 PM
Attachments: [RQO 13-006 \(with comments and clarifications\).docx](#)

Megan:

Thank you for providing a copy of draft opinion RQO 13-006 for our review (attached are additional comments and clarifications). While the draft opinion affirms that a prohibited voting conflict does not exist under the specific facts set forth in our letter dated April 10, 2013 ("Letter"), it goes on to recommend that the Official abstain from voting based on an "appearance of impropriety." With respect to this recommendation, and on behalf of the Office of the City Attorney, we wanted to provide some additional thoughts.

First, it is well settled state law that officials have an affirmative obligation to vote (except if a prohibited voting conflict exists), and the notion of abstaining (without a voting conflict) is inconsistent with this law. F.S. § 286.012. As indicated in our Letter, the Official was previously faced with a related voting conflict issue, but there was insufficient time to request and receive a Commission on Ethics ("COE") advisory opinion, and therefore the issue of voting conflict remained uncertain. Accordingly, for the prior vote, the Official recused herself in an abundance of caution based on the statutory "appearance of conflict" provision. However, upon resolution of that uncertainty in the negative (no conflict exists), the Official has an affirmative obligation to vote. The recommendation in the draft opinion cuts against the statute establishing an affirmative duty to vote.

Also, it is worth noting that the draft opinion relies on Section 2-441 of the Code of Ethics ("Code") for the recommendation against voting. However, this section is a general statement of purpose designed to set forth the objectives of the Code. Specific provisions of the Code on prohibited voting conflicts (and other substantive issues) direct officials regarding permitted and prohibited actions. In this instance, the voting conflict rules do not prohibit voting and therefore it is appropriate to conclude a vote should be entered. If that is not the case, then the Code's specific provisions would fall victim to the general, conceptual statement of purpose and create a cloud over all actions taken in compliance with the specific provisions of the Code.

Further, state law provides three options to officials when faced with a voting conflict or possible voting conflict: vote when there is no conflict; recuse when there is a voting conflict; or recuse when there is an appearance of a voting conflict. F.S. § 286.012. The "appearance of conflict" provision is generally reserved for situations where, for any number of reasons, it is uncertain if a prohibited voting conflict exists. Under the Code, however, only two options are available to officials when faced with a voting conflict or possible voting conflict: to vote when there is no conflict, or to recuse when there is a voting conflict. Section 2-443(c) of the Code. Again, as the draft opinion concludes that there is no conflict based upon application of the specific provisions of the Code to the facts presented, participation in the vote is an appropriate course of action.

Finally, it is important to put the recommendation of the draft opinion in context. Although the Code does not contain an "appearance of conflict" provision, as does state law, it is certainly appropriate to acknowledge that facts or circumstances may exist where an official determines that recusal based upon an appearance of conflict is the appropriate action. However, as acknowledged in the draft opinion by the suggestion that recusal is a recommendation and not a requirement of the Code, the determination to vote or recuse when there is not a voting conflict is a decision to be made by officials.

Thank you, again, for your assistance in this matter.

Sincerely,

- JPK

Joshua P. Koehler
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201 West Palmetto Park Road Boca

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*Please note: The State of Florida has a broad public records law. Many written communications to or from the City of Boca Raton are public records available to the public and media upon request. Your e-mail communications, including your e-mail address, may therefore be subject to public disclosure. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to the City of Boca Raton. Instead, contact this office by phone or in writing.

Dear Megan: (sent via e-mail on 5.22.13)

Thank you for your continued assistance with the City of Boca Raton's ("City") request for advisory opinion in RQO 13-006. We followed the discussion of RQO 13-006 during the May 2, 2013 meeting of the Palm Beach County Commission on Ethics ("COE") with great interest. In regard to the COE's interpretation of the Palm Beach County Code of Ethics ("Code"), and on behalf of the Office of the City Attorney, we wanted to provide some general observations regarding what we believe are the applicable rules of statutory construction. We appreciate your consideration of the law discussed below and welcome review and consideration of any other law that you believe will help guide this analysis.

We agree that the COE has the power to interpret the Code. Section 2-258(a)(1) and Section 2-448(a), Code; Section 8.2, Palm Beach County Charter. However, any agency, judicial or otherwise, which is responsible for the application and interpretation of a law or regulation ("agency") must look first to the actual language and text of the regulation itself. Diamond Aircraft Industries, Inc. v. Horowitch, 107 So.3d 362, 367 (Fla. 2013) ("statutory analysis begins with the plain meaning of the actual language of the statute, as [the court] discern[s] legislative intent primarily from the text of the statute"); State v. Sturdivant, 94 So.3d 434, 439 (Fla. 2012) ("[a]s with any case of statutory construction, [a court must] begin with the 'actual language used in the statute' "); Johnson v. State, 78 So.3d 1305, 1310 (Fla. 2012) ("legislative intent guides statutory analysis, and to discern that intent [a court] must look first to the language of the statute and its plain meaning"); Hill v. Davis, 70 So.3d 572, 575 (Fla. 2011) (a court looks first to the statute's text because "the statute's text is the most reliable and authoritative expression of the Legislature's intent").

When a regulation is clear and unambiguous, interpretation by an agency is neither necessary nor permissible; in such instances, an agency does not look beyond the regulation's plain language or resort to rules of construction. State v. Hackley, 95 So.3d 92, 93 (Fla. 2012) ("if the meaning of the statute is clear and unambiguous, [the court] look[s] no further"); Johnson, 78 So.3d at 1310 ("[w]here the statute's language is clear or unambiguous, courts need not employ principles of statutory construction to determine and effectuate legislative intent"); J.M. v. Gargett, 101 So.3d 352, 356 (Fla. 2012) ("[w]hen the language is unambiguous and conveys a clear and definite meaning, that meaning controls unless it leads to a result that is either unreasonable or clearly contrary to legislative intent"); M.W. v. Davis, 756 So. 2d 90, 101 (Fla. 2000) ("[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction"). Moreover, an agency is not empowered to interpret a clear and unambiguous provision of a regulation or modify its express terms. Stoletz v. State, 875 So.2d 572, 576 (Fla. 2004) ("the courts are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms"); Princeton Homes, Inc. v. Morgan, 38 So.3d 207, 212 (Fla. 4th DCA 2010) ("[i]t is well-settled that courts in this state are without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications").

Importantly, when a term is defined in a regulation, there is no ambiguity and an agency does not have the authority to redefine it. Baker v. State, 636 So.2d 1342, 1343-44 (Fla. 1994) ("[w]here the legislature has used particular words to define a term, the courts do not have the authority to redefine it"); BDO Seidman, LLP v. Banco Espirito Santo Intern., Ltd., 26 So.3d 1, 3 (Fla. 3rd DCA 2009); D.M. v. Dobuler, 947 So.2d 504, 509 (Fla. 3rd DCA 2006). When a regulation defines a word, that definition controls. Ervin v. Capital Weekly Post, Inc., 97 So.2d 464, 469 (Fla. 1957) ("[a] statutory definition of a word is controlling and will be followed by the [c]ourts"). An agency is not at liberty to add words to a regulation that were not placed there by the legislative body. Seagrave v. State, 802 So.2d 281, 287 (Fla. 2001) ("it is a basic principle of statutory construction that courts 'are not at liberty to add words to statutes that were not placed there by the Legislature' "); State v. Little, 104 So.3d 1263, 1265-66 (Fla. 4th DCA 2013) ("[i]n analyzing statutory language, reviewing courts must give the statutory language its plain and ordinary meaning, 'and cannot add words which were not placed there by the Legislature' "). Even where an agency is convinced that the legislative body really meant and intended something not expressed in the phraseology of a regulation, an agency is not authorized to depart from an unambiguous definition or from the clear language of the regulation. Florida Birth-Related Neurological Injury Compensation Ass'n v. Department of Administrative Hearings, 29 So.3d 992, 997-98

(Fla. 2010) (“even where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the [statute], it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity”).

The term “customer or client” is defined by the Code, as well as the term “persons and entities.” Section 2-442, Code. These definitions are clear and unambiguous and do not include an owner, officer, director, partner, principal, member, or other person or entity with the authority to direct or control the entity that is the “customer or client” of the official’s outside business. An agency must presume that the legislative body knew the meaning of the words and terms that it used in a regulation. King v. Ellison, 648 So.2d 666, 668 (Fla. 1994) (“[w]e presume that the legislature knows the meaning of the words employed in a statute and that the words properly express legislative intent”); Vargas v. Enterprise Leasing Co., 993 So.2d 614, 618 (Fla. 4th DCA 2008) (“courts must presume that a legislature says in a statute what it means and means in a statute what it says there”); Haskins v. City of Ft. Lauderdale, 898 So.2d 1120, 1123 (Fla. 4th DCA 2005) (“[a] basic canon of statutory interpretation requires [a court] to ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there’”). Likewise, we believe that this rule governs the application of the Code to the facts set forth in RQO 13-006.

Further, when a regulation uses a term in one section but omits it in another, an agency should not imply a term where it has been excluded. Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC, 986 So.2d 1244, 1258 (Fla. 2008) (“[u]nder the canon of statutory construction *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another”); Bortell v. White Mountains Ins. Group, Ltd., 2 So.3d 1041, 1045-46 (Fla. 4th DCA 2009) (“[w]hen the legislature has used a term in one section of the statute but omits it in another section of the same statute, [a court] will not imply it where it has been excluded”); Paragon Health Services, Inc. v. Central Palm Beach Community Mental Health Center, Inc., 859 So.2d 1233, 1235 (Fla. 4th DCA 2003) (“[w]here the legislature has included a specific provision in one part of a statute and omitted it in another part, [a court] must conclude that it knows how to say what it means, and its failure to do so is intentional”). Unlike in the definition of “customer or client,” the Code defines the term “vendor” to include “an owner, director [or] manager.” Section 2-442, Code. Likewise, the gift prohibition and disclosure provisions of the Code provide that “a principal or employer of a lobbyist shall include any officer, partner or director of the principal or employer entity.” Section 2-444(d), Code. Since the Code includes the terms “owner, officer, director, partner, principal or member” in these instances but intentionally omits those same terms in the definition of “customer or client,” we believe that the COE is bound by the Code’s unambiguous definition. Even if those additional terms were applicable here, which they are not, it may be that the Developer does not even qualify under one of these terms: owner, officer, director, partner, principal or member in the Association, the qualifiers utilized in other sections of the Code.

The rules of statutory construction acknowledge that in certain limited circumstances, an agency may depart from the plain language of a regulation. However, these circumstances are limited to when a literal reading of the regulation would lead to such an unreasonable, absurd or ridiculous conclusion so as to be clearly contrary to the obvious legislative intent of the legislative body or result in a manifest incongruity. Hackley, 95 So.3d at 95 (“the absurdity doctrine ‘is to be applied to override the literal terms of a statute only under rare and exceptional circumstances’ ”); Las Olas Tower Co. v. City of Ft. Lauderdale, 742 So.2d 308, 312 (Fla. 4th DCA 1999) (“[i]n statutory construction a literal 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”). Those exceptional circumstances are not present in the instant case. Further, an agency cannot default to this exception as a fallback rule any time it does not wish to be bound by the text of a regulation. Hackley, 95 So.3d at 95 (“the absurdity doctrine is not to be used as a freewheeling tool for courts to second-guess and supplant the policy judgments made by the Legislature”).

In addition, several COE members commented during the May 2, 2013 meeting that the COE is not bound to place “form over substance.” However, an agency’s function is not to determine what a regulation *should* mean or substitute the agency’s opinion of what the law should be for that of the legislative body. An agency must leave it to the legislative body to correct any inconsistencies in the application of a regulation. Gulder v. State, 899 So. 2d 412, 419 (Fla. 4th DCA 2005) (“[i]t is a firmly established rule that [c]ourts must apply a statute as they find it, leaving to

the legislature the correction of assorted inconsistencies and inequalities in its operation' "). Even if the Palm Beach County Board of County Commissioners ("BCC"), the legislative body, were to determine that the definition of "customer or client" should extend to an owner, officer, director, partner, principal, member, or other person or entity with the authority to direct or control the entity that is the "customer or client" of the official's outside business, the BCC could not simply proclaim it to be so. The BCC would have to follow the statutory procedural requirements of notice and public hearing to adopt clarifying legislation. See F.S. § 125.66. Concluding that a voting conflict exists in reliance on a general philosophy of what should or should not constitute a conflict, versus in reliance on application of the plain language of the Code, may result in establishment of a new legislative policy without the protections of the statutorily proscribed legislative process.

Finally, the facts included in our request for advisory opinion were based upon application of the Code as it is written and the unambiguous definition of the term "customer or client." If, notwithstanding the rules of statutory construction, the COE elects to create a new rule with respect to determining which persons or entities are considered the "customer or client" of an official's outside business, it is reasonable to expect that the new rule will be set forth without reaching a conclusion with regard to this request. After all, only once a new rule has been articulated can a party know what facts the COE has set forth as relevant and what inquiry the party should make. Since issues such as "authority to direct or control decisions" do not appear in the definition of "customer or client" in the Code, we neither made an appropriate inquiry into such facts nor provided any such facts within our request for opinion. Creation of a new rule will likely create the need for additional inquiry of relevant facts.

In summary, the law establishes that when a regulation is clear and unambiguous, an agency is bound to follow (and apply) the regulation as it is written. We believe that the rules of statutory construction set forth above apply to the Code and the plain definition of the term "customer or client." Again, we appreciate your consideration of the law discussed above and welcome review of any other law that you believe will help guide this analysis. We request that a copy of this e-mail (and our e-mail dated April 25, 2013) be included in the record in connection with RQO 13-006. Thank you for your assistance in this matter.



July 16, 2013

Steven Cullen, Executive Director
Palm Beach County Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Re: Request for Advisory Opinion (REVISED)

Dear Mr. Cullen:

On behalf of a member of the City Council of the City of Boca Raton ("Official"), we request an advisory opinion from the Palm Beach County Commission on Ethics ("COE"). The question relates to an anticipated vote that may be impacted by Section 2-443(a)(5) and Section 2-443(c) of the Palm Beach County Code of Ethics ("Code"). This revised request for advisory opinion contains additional information to update and supplement our letter dated April 10, 2013.

I. Relevant facts and provisions of the Code of Ethics

a. Facts

The Official and her husband own a property management company ("Management Company").¹ The Management Company provides property management services to a residential community in Broward County consisting of approximately sixteen hundred condominium and apartment units ("Property"). The overall operation of the Property is the responsibility of a master condominium association, a Florida nonprofit corporation ("COA"). The COA contracts with the Management Company for property management services; the Management Company has provided a total of approximately \$24,000.00 in property management services to the COA during the past twenty-four months. All but approximately two hundred of the sixteen hundred units on the Property are owned by an investor ("Investor"), by family members of the Investor or by business entities in which the Investor has a controlling interest.²

In addition to the Property, the Investor has extensive real property investments throughout the City of Boca Raton ("City"). An unrelated developer may propose a redevelopment project located in the City ("Project"). The Project is unrelated to the COA. The Investor is neither the applicant nor the developer of the Project. However, the Investor has an interest in the underlying property for this proposed Project as an owner or investor. In order to proceed with the Project, the developer will require the approval of the City Council. The approval (or denial) of the Project will result in a special financial benefit (or loss) to the developer and, therefore, to the Investor. In the past, the Official abstained and did not participate when the Investor sought a different approval from the City Council (due to insufficient time to request an advisory opinion from the COE and in an

¹ The Management Company is established as a Florida limited liability company; the Official and her husband are both managing members and receive compensation for services rendered by the Management Company. The Management Company provides property management services to numerous clients in Palm Beach and Broward Counties.

² The annual report of the COA (filed with the Florida Division of Corporations) provides a mailing address for both the president and vice-president of the COA as "care of" a business entity in which the Investor has a controlling interest.

abundance of caution). The Official now seeks clarification from the COE as to the application of Section 2-443(a)(5) and Section 2-443(c) of the Code.

b. Relevant provisions of Code of Ethics

Section 2-443(a)(5) of the Code provides in relevant part:

(a) 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:

* * *

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

Section 2-443(c) of the Code provides in relevant part:

(c) 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 2-442 of the Code provides in relevant part:

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 (\$10,000.00).

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...

Persons and entities shall be defined to include all natural persons, firms, associations, joint ventures, partnerships, estates, trusts, business entities, syndicates, fiduciaries, corporations, and all other organizations.

II. The Code does not appear to prohibit the Official from voting on the Project

a. The Investor is not a "customer or client" of the Management Company

Section 2-443(a)(5) and Section 2-443(c) of the Code do not appear to prohibit the Official from voting on the Project because the Investor is not a "customer or client" of the Official's outside business (the Management Company). The Code provides a clear and unambiguous definition of the term "customer or client."³ In this case, the COA is the entity to which the Official's outside

³ See *Baker v. State*, 636 So.2d 1342, 1343-44 (Fla. 1994)("[w]here the legislature has used particular words to define a term, the courts do not have the authority to redefine it."); *M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000) ("[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to

business (the Management Company) supplies services, not the Investor. The COA is the entity that contracts with the Official's outside business (the Management Company), not the Investor. The COA is the entity that pays the Official's outside business (the Management Company) to supply services for the COA at the Property, not the Investor. Further, the COA and the Investor are not "effectively interchangeable in terms of identity or purpose."⁴ Accordingly, the Official does not appear to be prohibited from voting on the Project under Section 2-443(a)(5) and Section 2-443(c) of the Code because the Investor is not a "customer or client" of the Official's outside business (the Management Company).

b. The COA will not benefit from the approval of the Project.

In addition, Section 2-443(a)(5) and Section 2-443(c) of the Code do not appear to prohibit the Official from voting on the Project because the COA (the "customer or client" of the Official's outside business) will not receive any special financial benefit from the approval of the Project. The COA is not involved in any way in the Project and has no interest in the Project. The COA's only interest is in the operation and maintenance of the Property, which is located in Broward County. Accordingly, the Official does not appear to be prohibited from voting on the Project under Section 2-443(a)(5) and Section 2-443(c) of the Code because the vote will not result in a special financial benefit to the COA, which is the "customer or client" of the Official's outside business (the Management Company).

III. Summary of analysis

Section 2-443(a)(5) and Section 2-443(c) of the Code do not appear to prohibit the Official from voting on the Project because the Investor is not a "customer or client" of the Official's outside business (the Management Company). Further, Section 2-443(a)(5) and Section 2-443(c) of the Code do not appear to prohibit the Official from voting on the Project because the COA (the "customer or client" of the Official's outside business) will not receive any special financial benefit from the approval of the Project.

IV. Request for Opinion

Based on the foregoing and on behalf of the Official, we request an advisory opinion from the Palm Beach County Commission on Ethics regarding the following question:

- (1) Do Section 2-443(a)(5) and Section 2-443(c) of the Code prohibit the Official from voting on the Project?

the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.") The definition of "customer or client" only captures the person or entity that is supplied with goods or services and does not list an owner, officer, director, partner, principal or member within the definition of such entity.

⁴ See C11-027 (finding a violation of Section 2-443(a)(5) and Section 2-443(c) of the Code where two legally separate entities had been run and publicly advertised "in such a manner as to make them effectively interchangeable in terms of identity and purpose," such that the COE considered both entities to be the official's "customer or client.") It is worth noting that in the context of voting conflicts under the state code of ethics, the Florida Commission on Ethics has demonstrated a clear reluctance to disregard the corporate form and has done so only in a limited number of circumstances.

Steven Cullen, Executive Director
Palm Beach County Commission on Ethics
July 16, 2013
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Based on earlier discussions with COE staff, I am hereby requesting that a copy of this letter be included in the record and provided to each member of the Commission on Ethics for their review in connection with this inquiry. Additionally, I am requesting that our follow up e-mail dated April 25, 2013 (regarding the "appearance of impropriety" standard) and the City's analysis regarding the rules of statutory construction, both of which are attached hereto, be included in the record in connection with this request for advisory opinion. Thank you for your assistance in this matter. Please feel free to contact me if you require additional information regarding this request.

Sincerely,



Diana Grub Frieser
City Attorney, City of Boca Raton

DGF/jpk

Enclosures

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

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August 16, 2013

Major Christopher Smith
Jupiter Police Department
210 Military Trail
Jupiter, FL 33458

Re: RQO 13-013
Gift Law

Dear Major Smith,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 15, 2013.

YOU ASKED whether Jupiter Police Department (JPD) officers were prohibited by the Code of Ethics from living in residential property within the jurisdiction of the JPD in an attempt to diminish potential crime and quality of life issues created by large tracts of abandoned property.

IN SUM, based on the facts you have submitted, where a municipal employee is assigned additional duties, in his or her official capacity, additional compensation or value provided to the employee from his or her public employer is not a prohibited or reportable gift.

THE FACTS as we understand them are as follows:

You are a major with the Jupiter Police Department (JPD). There are two parcels of land near the Jupiter Lighthouse that are currently being turned over by the US Coast Guard to the US Bureau of Land Management (Bureau). JPD is the primary law enforcement agency for the property and has been working with the Bureau to determine the best way to ensure the safety and security of the property once it is fully abandoned. There are two available residential buildings on the property. One of the ideas proposed by the Bureau and JPD is to maintain those properties and allow 2 officers to live in them. The residential officers would not pay rent but would be responsible for any other normal household costs. Under this proposal, the officers would be assigned to opposite days off, thus increasing the presence of someone on the property. JPD believes that this would be very beneficial in preventing many crime and quality of life issues created when large tracts of land are suddenly abandoned. Should the JPD and Bureau elect to pursue this option, the JPD would establish a selection process in order to ensure fairness in determining which officers will reside on the property.

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

Sec. 2-444(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)

Municipal employees and officials subject to the Code of Ethics are required to report gifts in excess of \$100, unless one of several exceptions applies. Based on the facts and circumstances you have described, the officers selected to reside on the property will do so in conjunction with their ongoing service to the Department. Moreover, they will be subject to additional terms and conditions based on living in these properties including a more restricted time-off schedule. Any "benefit" of rent free housing received by the residential officers would be part of their overall compensation or expense reimbursement as employees of JPD and not in the nature of a "gift." JPD and the residential officers would be responsible to assess and properly address any tax consequences from the arrangement. The value of the officer's ongoing presence at the property may be off-set consideration

for whatever value the officer may personally receive. Under the circumstances presented, rent free housing for residential officers is neither a prohibited nor reportable gift as contemplated by the Code. Your advisory opinion request contains no facts or circumstances to indicate that the policies and procedures proposed by the City involve misuse of office for special financial gain, corrupt misuse of official position or any other regulation or prohibition contained within the Code of Ethics.

IN SUMMARY, based on the facts and circumstances submitted, the JPD is not prohibited by the Code from selecting officers to reside in residential property within the Department's jurisdiction and control.

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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen,
Executive Director

SPC/mcr/gal

PROPOSED

August 16, 2013

Jon Van Arnam, Assistant County Administrator
Palm Beach County Governmental Center
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 13-015
Nepotism

Dear Mr. Van Arnam,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 15, 2013.

YOU ASKED whether the anti-nepotism provision prohibits your fiancé from continuing to work for Palm Beach County and if her continued employment is not prohibited whether the anti-nepotism provisions exclude her from receiving any promotion or advancement while you serve as an Assistant County Administrator.

IN SUM, §2-445 of the Code prohibits a public official, as defined in the law, from employing, appointing, promoting or advancing their relative. The anti-nepotism provision does not require the discharge of a person who becomes a relative or whose relative takes a higher position after the person's employment. Based on the facts you provided, it appears that you do not exercise control over promotion or employment within the department where your fiancé works. So long as you do not advocate her promotion in the future, she would not be precluded by the ordinance from accepting a superior position with the County.

THE FACTS as we understand them are as follows:

You are an assistant county administrator and have recently become engaged to Maria Watson, an employee of the Community Services Department. Ms. Watson has been employed with Palm Beach County since January of 2007. As contracts/grants coordinator for the Community Services Department Ms. Watson reports to the Contracts Manager, who reports to the Director of the Division of Human services, who reports to the Community Services Department Head.

As an assistant county administrator, you provide oversight to four departments including: Parks and Recreation, Libraries, Purchasing and Community Services. In this role you supervise the various Department heads and perform administrative functions related to the departments including but not limited to budget review, approval of BCC agenda items, report review and editing.

You have no direct involvement in the regular work activities of Ms. Watson or any other departmental employees below the department head level. The County merit system provides extensive regulatory requirements for employment. Under the merit system, Assistant County Administrators do not engage in the hiring, firing or direct supervision or evaluation of personnel below the level of department head.

You have no hiring/firing authority or ability to grant promotions or pay adjustments. However, you are on occasion consulted by a department head on personnel matters including disciplinary actions, high-level hiring and various policy issues. Just over a year ago, you advised your supervisor, County Administrator Robert Weisman of your relationship with Ms. Watson. At that time, human resources and county administrator Weisman removed your oversight of any review or action involving Ms. Watson including personnel matters or department reorganization proposals. This was formally codified by memorandum soon after your engagement. Any matter involving Ms. Watson is automatically referred to the County Administrator for review and/or action.

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 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official.

- (1) For the purposes of this section, "official" means any official or employee in whom is vested the *authority by law, rule, or regulation* or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.
- (2) For the purposes of this section, "relative" means *spouse*, parent, child, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. (emphasis added)

Section 2-445 of the Palm Beach County Code of Ethics (the Code) is identical to the Anti-nepotism provision in the Florida Code of Ethics.¹ By its terms, §2-445 addresses only appointment, employment, promotions or advancement. The anti-nepotism provision does not prohibit two relatives from working together, or one relative from supervising another.² Rather, this provision prohibits a public official from promoting or advancing, or advocating the promotion or advancement of, a relative in the agency he serves or over which he exercises control. As an Assistant County Administrator you may be involved in the overall policy decisions of the Community Services Department. However, you do not have the authority to appoint, promote, or advance persons to fill positions within Community Services or the other departments you oversee.

For the purposes of the Code of Ethics, the County Administrator is the person "vested" by ordinance with the authority to hire and promote staff within the County. While the County Administrator has the ultimate, non-delegable authority to hire and promote, you do not have that authority as an Assistant

¹ Fla. Stat. 112.3135

² CEO 96-13

County Administrator. ³ That authority has been delegated by rule or regulation to senior level staff, in this case the Director of Community Services.⁴ Because you are not the public official vested with authority to hire or promote and you were not given such authority by other law, rule or regulation, your spouse would not be prohibited from accepting a new placement within the county in the future.⁵

Section 2-445 also prohibits an employee from using their official position to advance or otherwise advocate a relative for promotion.⁶ Accordingly, you must take great care not to use your position as an Assistant County Administrator to recommend or otherwise advocate for the promotion of your spouse should she seek a new position with the County.

IN SUMMARY, based on the facts and circumstances provided, so long as you do not advocate for your fiancé's promotion or other advancement, the anti-nepotism provision of the Code of Ethics does not preclude her advancement or continued employment with Palm Beach County.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted.

Please feel free to contact me at 561-355-1937 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

SPC/mcr/gal

³ Palm Beach County Code: Chapter 2, Article 2, §2-20

⁴ See Palm Beach County PPM#CW-P-004; Palm Beach County Merit Rule 3.02A

⁵ CEO 93-11 (wife of a county commissioner was not prohibited from being promoted within the county's solid waste department because it was the county manager who held the promotional authority rather than the county commission as a collegial body), see also CEO 02-11 (promotion of brother of the Director of the Florida Highway Patrol (FHP) was not prohibited, Executive Director of agency rather than brother/Director was the public official vested with the authority to make the appointment).

⁶ As defined in *Slaughter v. City of Jacksonville*, 338 So. 2d 902,904 (1976) "advancement" or "promotion" means an increase in grade which elevates an employee to a higher rank or position of greater personal dignity or importance.