

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. **CALL TO ORDER:** April 7, 2011, at 3:33 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. **ROLL CALL**

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Dr. Robin Fiore – Appeared telephonically
Ronald Harbison
Bruce Reinhart, Esq. – Arrived later

STAFF:

Alan Johnson, Esq., COE Executive Director
Gina Levesque, COE Administrative Assistant
Megan Rogers, COE Staff Attorney
Sydone Thompson, Deputy Clerk, Clerk & Comptroller's Office

III. **INTRODUCTORY REMARKS**

Judge Edward Rodgers stated that Dr. Robin Fiore would be appearing via telephone and he asked everyone to turn off or silence their cell phones.

IV. **APPROVAL OF MINUTES FROM MARCH 3, 2011**

MOTION to approve the minutes of the March 3, 2011, meeting. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 3-0. Robin Fiore and Bruce Reinhart absent.

(CLERK'S NOTE: Robin Fiore joined the meeting telephonically.)

Dr. Robin Fiore stated that she had no corrections to the March 3, 2011, COE meeting minutes.

(CLERK'S NOTE: At the request of the chair, the agenda was taken out of sequence. Item XI. was discussed at this time.)

XI. REVIEW OF PUBLIC COMMENT PROCEDURES

Alan Johnson, Esq., Commission on Ethics (COE) Executive Director (ED) stated that:

- At the March 3, 2011, COE meeting Manuel Farach requested a review of protocols for public comment so the COE could establish meeting procedures.
- The review consisted of County public comment policies and procedures, State statutes, and case law for County advisory boards and Board of County Commissioner (BCC) meetings.
- Florida Statute 286.011, the Florida Sunshine Law (Sunshine Law) did not specify whether public comment was required at public meetings.
- Statutes found in Chapter 163 of the Sunshine Law indicated the types of advisory boards that permitted public comments prior to voting. They included:
 - The Planning and Zoning Commission that required the public's input prior to making a zoning or land-use changes; or,
 - Quasi-judicial duly noticed hearings facilitated by a special master.
- The Florida courts extended the concept of public meetings to a marketplace of ideas in which governmental agencies received sufficient input from citizens. Case law stipulated that public comments were permissible for legislative agenda items, but not for executive decisions.
- Some County advisory boards published their agendas and one added a public comment agenda item.
- Staff recommended that:
 - Public comments should not be taken for final public hearings for complaint cases and executive sessions; and, should be permitted at the beginning at COE meetings;
 - The chair had the discretion to limit inappropriate public comments and impose time limits; and,

XI. – CONTINUED

- A public comment section should be added to the COE's Rules of Procedure for non-executive sessions and non-final hearings.
- Examples of COE legislative actions included making recommendations to the BCC and COE drafting committee regarding COE ordinance modifications, and amending the COE Rules of Procedure.

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

Mr. Farach proposed that public comments should be permitted for each agenda item, prior to the COE taking action by vote or otherwise. He added that public comments should also be permitted during meetings in which punishment was imposed.

Mr. Harbison voiced his disagreement with Mr. Farach's proposal and suggested limiting public comments to two minutes.

Mr. Farach stated that he agreed with Mr. Harbison's recommendation to limit public comment to two minutes, but at the discretion of the chair, Judge Rodgers.

Mr. Johnson said that:

- In final public hearings, the public was not sworn prior to addressing the commission. Their statements, if directed toward substantive matters, could become evidence.
- In sentencing hearings, evidentiary or weighted statements made by the public should be disallowed.
- Public comment should be made after the sentencing phase to avoid conflicts.

Dr. Fiore expressed concern that members of the public would be permitted to make statements at a final hearing without being placed under oath prior to the commission handing down its penalty.

Mr. Harbison said that he did not believe it was appropriate in the context of a hearing for the public to make comments.

XI. – CONTINUED

Judge Rodgers said that he did not believe that the commission had the authority to place members of the public under oath as a requirement for speaking at COE meetings.

Mr. Harbison remarked that if a member of the public were not a party to the case while the COE deliberated, then their statements would muddle the deliberative process.

Dr. Fiore said that if the public had not heard the evidence that the commission was privy to, then she questioned the value of their comments.

Mr. Johnson said he had spoken with Miami-Dade Commission on Ethics and Public Trust Executive Director Robert Meyers, placed public comments at the end of its agenda, and experienced members of the public making weighted comments prior to the completion of the executive session.

Judge Rodgers said that the public was entitled to comment on the commission's actions. He added that persuasive comments made by the public could influence the commission's decision-making process.

Bruce Reinhart stated that he agreed with Judge Rodgers' statement. He said that in adjudicatory hearings, there was sentiment that the commission should take public comment prior to rendering sentences. He concluded that sanctions imposed by the commission should not be subject to the view of the public.

Judge Rodgers said that he agreed with Mr. Reinhart's comment and that he recommended fine-tuning guidelines for such circumstances.

MOTION to approve, subject to the discretion of the chair and excluding aspects of the Commission on Ethics that were evidentiary in nature, that public comment should be permitted with regard to each group of agenda items prior to the commission taking a vote. Motion by Manuel Farach.

MOTION DIED FOR LACK OF SECOND.

XI. – CONTINUED

Judge Rodgers suggested that the matter be tabled for discussion at a future meeting.

Mr. Johnson said that:

- The COE could, at today's meeting, permit public comment for agenda items XI., X., XII., and XIV.
- The final Public Comment agenda item served as a platform for commentators to address concerns that were not discussed during the meeting.
- Most advisory boards permitted public comment at the end of meetings.
- Members of the public should submit comment cards to speak on agenda items, and be limited to two minutes.

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

V. PUBLIC COMMENT

V.a.

DISCUSSED: Public Comment.

Suzanne Squire after reading the COE mission statement, she asked that the commission received her document for public record purposes. She stated that the commissioners mistreated her at the prior COE meeting on March 3, 2011. She said that the commission was usurping its authority and treading on the people in the county.

(CLERK'S NOTE: At the threat of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum.)

Alexandria Larson said that it was offensive when commission members stated they did not want to hear from the public.

Judge Rodgers asked Ms. Larson if she had suggestions on procedures for public comment.

V.a. – CONTINUED

Ms. Larson said that members of the public should speak for three minutes and make their statements without interruption. She concluded that the public was taken out of the process, and that she implored the commission to review videos of the board of county commissioners' meetings.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

Mr. Johnson stated that processed advisory opinions VII.a., RQO 11-017 and VI.e. RQO 11-016 pulled from the agenda were both items that involved the definition of lobbying in the context of lobbyists, and prohibitions against soliciting or accepting a gift greater than \$100 from a lobbyist, principal, or employer of a lobbyist. He said that the remaining consent agenda items VI.b. RQO 11-011, VI.c. RQO 11-014, and VI.d. RQO 11-015, could be voted on in their entirety.

Mr. Farach and Mr. Harbison requested that item VI.a. RQO 11-009 be pulled from the consent agenda because both commissioners had served on separate boards with Sarah Alsofrom, the petitioner in the opinion.

Dr. Fiore requested that item VI.a. RQO 11-009 be pulled from the consent agenda since it pertained to lobbying.

- VI.a. RQO 11-009 – Page 17**
- VI.b. RQO 11-011**
- VI.c. RQO 11-014**
- VI.d. RQO 11-015 – Pages 12-16**
- VI.e. RQO 11-016 – Pages 11-12**

MOTION to approve consent agenda items RQO 11-011, RQO 11-014, and RQO 11-015. Motion by Bruce Reinhart, seconded by Ronald Harbison.

VI. – CONTINUED

PUBLIC COMMENT: Alexandria Larson.

Judge Rodgers said it would be inappropriate to make a decision on an advisory opinion after polling audience members.

Mr. Johnson suggested that Ms. Larson contact his office to discuss her inquiries.

Judge Rodgers suggested amending the COE Rules of Procedure so the public would be prohibited from commenting on cases in which the commission rendered a final decision.

MOTION to accept staff's recommendation that public comments should not be taken for final public hearings on complaint cases and executive sessions; and, should be permitted at the beginning at COE meetings; that the chair had the discretion to limit inappropriate public comments, and impose time limits; and, that a public comment section should be added to the COE's Rules of Procedure for non-executive sessions and non-final hearings. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 4-1. Manuel Farach opposed.

Mr. Johnson asked whether the commission had voted to adopt items VI.b. RQO 11-011, VI.c. RQO 11-014, and VI.d. RQO 11-015. Mr. Harbison stated that the motion was to adopt staff's recommendation about public comment.

Mr. Johnson clarified that staff's recommendation was to accept public comment after each separate agenda item at today's meeting. He said that any public comments regarding requests for advisory opinions (RQO) should be permitted at the end of the meeting under agenda item XIV.

RESTATED MOTION to accept staff's recommendation as stated by Mr. Johnson. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 4-1. Manuel Farach opposed.

(CLERK'S NOTE: The consent agenda vote was taken at this time.)

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

(CLERK'S NOTE: Consent agenda items RQO 11-009 and RQO 11-016 were pulled for discussion at this time.)

VII. ITEMS PULLED FROM CONSENT AGENDA

Regarding processed advisory opinions RQO 11-016 and RQO 11-017, Mr. Johnson explained that:

- The lobbyist registration ordinance defined lobbying, but the Code had no such definition.
- The COE drafting committee incorporated the definition of lobbying into the Code as it related to the municipalities. It was presumed that the definition of lobbying would remain in the Code.
- Goodwill lobbying, added to the Code, was another type of lobbying.
- The term, lobbyist, did not refer to a specific governmental entity, but described someone who tried to influence governmental decisions.
- The term, lobbying, modified the term, lobbyist, as an act performed before a particular government.
- In advisory opinion RQO 10-030:
 - Rachel Ondrus, Executive Director of the County legislative delegation, attempted to rent an apartment from a woman whose husband was a lobbyist for the State legislature;
 - The lobbyist husband had not lobbied the County, and the commission concluded that any lobbyist regardless of location was a lobbyist as per the Code; and,
 - Therefore, gifts greater than \$100 could not be accepted from that individual.
- Staff recommended that:
 - There was no rational basis to sustain appeals against lobbyists who had not lobbied the County or actively lobbied the County.
 - An acceptance of the definition of lobbyist without a definition of lobbying only partially addressed the term.

VII. – CONTINUED

- The COE could decide whether to discard the earlier advisory opinion decision and apply both Codes' definitions, which were in the jurisdiction of the COE, since lobbyists worked within certain jurisdictions.

Mr. Reinhart recommended that the COE limit the lobbyists' prohibition to individuals lobbying in a particular public official's jurisdiction.

Dr. Fiore stated that:

- She did not agree with Mr. Reinhart's recommendation because, in light of State term limits, intra-county, and intra-state commerce in the County, the issue was not the lobbyists' geographical origination. Lobbyists gave gifts to gain influence. Such actions constituted corruption.
- Human beings responded favorably to people who granted favors through gifts. Therefore, public officials should not accept gifts.

Mr. Reinhart said that the issue was treated broadly, since public officials could not accept legitimate gifts from friends or family members who had not lobbied that public official. He asked whether carveouts for legitimate gifts could be permitted.

Mr. Johnson explained that the COE drafting committee considered whether vendors, lobbyists, principals, or employers of lobbyists should be prohibited from giving gifts greater than \$100 to a public official they were vending; and, he added that the goal was not to create carveouts for vendors, lobbyists, principals, or employers of lobbyists. He said that if the COE viewed all lobbyists and vendors under the \$100 or greater gift prohibition, vetting the issue with the drafting committee could prove problematic from a legal perspective.

Dr. Fiore asked whether it was acceptable for a vendor to give a gift prior to a contract being in force. Mr. Johnson said that it was prohibited because the Code specifically discussed vendors who sought favors in anticipation of future contracts.

VII. – CONTINUED

Mr. Johnson added that:

- The lobbyist definition was inadvertently omitted from the Code. The term lobbying was in the Code.
- Lobbying was defined in the lobbyist registration ordinance and included provisions for goodwill gifts.
- The Code addressed advisory board members who lobbied their advisory board or department over which the advisory board exercised authority.
- The ordinance limited lobbyists' sphere of influence.

Judge Rodgers asked whether geographical confines existed for lobbyists.

Assistant County Attorney Leonard Berger said that:

- The definition of lobbying as drafted in the lobbyist registration ordinance was relative to the Code. The element of knowledge was an important factor to consider when discussing lobbyists and the gift law.
- One concrete method for determining whether someone knew or should have known that an individual was lobbying was to check the lobbyist register.
- It would be difficult to rationalize preventing out-of-State lobbyists from giving gifts to a County employee or official.
- The registration process required lobbyists to indicate their areas of legislative interests, and it proved difficult for them to disclose every board they could appear before.
- The County's Information System Services department was currently developing a centralized lobbyist registry with the League of Cities for municipalities' use.
- Individuals who lobbied the State were registered with the State, but not with the County's registry.

VII. – CONTINUED

- A County employee could not accept gifts from lobbyists who did not lobby the County, but who lobbied a municipality.

VI.e. RQO 11-016

Mr. Johnson stated that City of Boynton Beach (Boynton Beach) City Manager Kurt Bressner requested an opinion RQO 11-016. He explained that COE staff counsel Megan Rogers, Esq., had processed the opinion and issued the response letter.

Regarding processed advisory opinion RQO 11-016 Ms. Rogers said that:

- Florida Power & Light (FPL) representatives invited Boynton Beach city commissioners (city commissioners) to attend as the guests at a local dinner-dance for the Schoolhouse Children's Museum and Learning Center.
- The Code did not define lobbying. The lobbyist registration ordinance defined lobbying as seeking to influence the decisions of the County commission.
- An organization, or donor of a gift who did not lobby a city or municipal commission, was not a lobbyist for purposes of the Code.
- Since FPL had not appeared before the city commissioners and it was not foreseeable that they intended to appear before that body, it was determined that the city commissioners could attend the event as FPL's guests.

Dr. Fiore stated that the COE had discussed instances where public officials who chaired charities were invited to events as honorary guests of various companies.

Ms. Rogers stated that Mr. Bressner assured her that none of the city commissioners or the mayor were actively involved in planning or fundraising for the dinner.

VI.e. – CONTINUED

Mr. Reinhart asked whether Boynton Beach officials were permitted to attend the dinner, and whether they were required to report gifts of \$100 or more. He said that if FPL lobbied Boynton Beach in the future, the gift registry would reflect the receipt of such a gift.

Ms. Rogers said that the Boynton Beach officials would be permitted to attend the event.

Judge Rodgers asked Mr. Farach to assume the chair since he signed off on opinion RQO 11-016.

Mr. Reinhart and Mr. Harbison said that they agreed with Ms. Rogers' analysis.

Dr. Fiore said that there was insufficient information and she questioned FPL's motives for purchasing a dinner table for the Boynton Beach officials.

MOTION to adopt staff's proposed opinion in RQO 11-016. Motion by Bruce Reinhart, and seconded by Ronald Harbison. Upon polling the committee, the motion carried 2-1. Manuel Farach opposed, Robin Fiore and Edward Rodgers abstained.

(CLERK'S NOTE: Judge Rodgers resumed as chair.)

VI.d. RQO 11-015

Mr. Johnson stated that:

- Processed advisory opinion RQO 11-015 involved the Royal Palm Beach Community High School Medical Science Academy Citizens Advisory Board (Academy Board). It stipulated that the group should be prohibited under the Code from soliciting sponsors and participants for a fundraising golf tournament to be held at a local golf course.

VI.d. – CONTINUED

- Staff's letter stated in sum that Academy Board members who were officials or employees of the County, or the specific municipalities under the Code's jurisdiction, which included Boynton Beach, the Town of Lantana (Lantana), and the City of Lake Worth (Lake Worth), were prohibited from soliciting any sponsorship or participant donation valued at more than \$100.
- The Code addressed such occurrences with the language, "from a person or entity they know to be a lobbyist, principal or employer of a lobbyist, if that lobbyist, principal or employer lobbies the government entity for whom they serve as an official or employee."
- Effectively, the parties involved in the opinion would not have solicited vendors under the highlighted conditions.

(CLERK'S NOTE: Judge Rodgers left the meeting.)

Dr. Fiore expressed concern that the Academy Board could solicit lobbyists and justify their actions because some individuals in the group were not public officials and therefore were not subject to the lobbyist law. She opined that some Academy Board members who were public officials should step down from the board in order for the group to participate in the event.

Mr. Reinhart said that based on the proposed gift law amendment, public officials could be charged with Code violations if the advisory board they served engaged in solicitation for the entire committee.

Mr. Johnson stated that:

- A previous advisory opinion involving County Commissioner Burt Aaronson, an elected official, who was asked to be an honoree at his synagogue's dinner. This exemplified indirect solicitation because the official's name was used to promote and sell tickets for the event.
- Advisory opinion RQ 10-041 involved a Boynton Beach employee who served as a Delray Beach advisory board member:
 - The issue was whether a gift or donation to a church constituted a personal gift to the board member.

VI.d. – CONTINUED

- The petitioner was notified that, “as an employee of the City of Boynton Beach, you were required to declare anything of value received in excess of \$100 if not specifically excluded from the definition of gift. A gift is anything of value.”
- The Code did not exclude reimbursements for church-related travel.
- The COE stipulated that employees could not solicit on behalf of the church or accept a gift in excess of \$100 from a lobbyist, principal, or employee of a lobbyist.

Mr. Reinhart stated that the events that led to RQ 10-041 was akin to the opinion involving Commissioner Aaronson, and constituted indirect solicitation.

Mr. Johnson asked whether the COE wanted to revise the response letter on RQO 11-015 to read that a County employee or public official could not serve on an advisory board that participated in soliciting for a fundraiser, even if the employee or official did not participate in the event. He said that this issue would also be discussed with the ordinance drafting committee on April 8, 2011.

Mr. Reinhart stated that if the drafting committee in the next 60 days corrected this issue legislatively, it could influence how the COE processed the opinion.

(CLERK'S NOTE: Judge Rodgers rejoined the meeting.)

Dr. Fiore suggested forming subcommittees so that the act of solicitation would apply to select advisory board members.

Mr. Johnson stated that he believed the drafting committee intended to vote in an opposite direction. He said that drafting committee members viewed fundraising as good public outcome, and some supported gift law carveouts for non-profit organizations. He concluded that the COE's decision on this opinion would affect the drafting committee's actions at tomorrow's meeting.

MOTION to direct staff to modify opinion on RQO 11-015 to reflect that the solicitation by the Royal Palm Beach Community High School Medical Science Academy Citizens Advisory Board would not be permissible based on the Commission on Ethics' interpretation of the gift law. Motion by Bruce Reinhart, and seconded by Robin Fiore.

VI.d. – CONTINUED

Mr. Johnson clarified that he inadvertently pulled item RQO 11-017 which was a separate issue from items RQO 11-015 and RQO 11-016. He suggested that another motion be made for the consent agenda approval.

AMENDED MOTION to rescind the consent agenda based on Scrivener's error with respect to item VI.d. RQO 11-015, and pulling items VI.b. RQO 11-011 and VI.c. RQO 11-014. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

AMENDED MOTION to direct staff to modify the conclusion in item VI.d. RQO 11-015 to reflect that solicitation from lobbyists of contributions by Royal Palm Beach Community High School Medical Science Academy Citizens Advisory Board would be prohibited by the gift law, section 2-444. Motion by Bruce Reinhart, and seconded by Robin Fiore.

Mr. Johnson stated that an elected official, County employee, or advisory board member would not be permitted to serve on a board associated with a religious or non-profit organization, and that he or she would be required to resign.

Judge Rodgers suggested that a niche be added to the Code for allowances made to non-profit organizations or religious institutions with elected officials as members.

Mr. Farach stated that if the COE recommended Code modifications regarding elected officials and charitable organizations, membership levels could negatively be affected.

Mr. Johnson said that:

- The issue with indirect gifts was that the advisory board members could not solicit or ask someone else to solicit on their behalf.
- The indirect gift component expanded to include board members or organizational solicitations from lobbyists who appeared before an official or employee's governmental entity.
- The first reading of the revised Code was scheduled for May 3, 2011, before the BCC.
- The drafting committee would likely adopt the State's standard, which allowed solicitation.

VI.d. – CONTINUED

Mr. Harbison commented that he favored prohibiting elected officials from soliciting lobbyists. However, he said he was not in agreement with holding a public official accountable because a fellow advisory board member engaged in soliciting a lobbyist.

SECOND AMENDED MOTION to direct staff to modify the conclusion to reflect that the requested conduct would be in violation of Code section 2-444, indirect solicitation. Motion by Bruce Reinhart, and seconded by Robin Fiore.

Mr. Johnson asked whether advisory board members should be asked to resign. Dr. Fiore suggested that they should take a leave of absence instead of stepping down.

Mr. Farach stated that he understood Mr. Reinhart's comments to mean that a public official's presence on the board would constitute indirect solicitation.

UPON POLLING THE COMMITTEE, the motion carried 3-1. Ronald Harbison opposed, and Edward Rodgers abstained.

VII.a. RQO 11-017

Mr. Johnson stated that:

- Processed advisory opinion RQO 11-017 involved Lucia Bonivita, a County employee who asked whether a hotel stay paid by her second cousin's reward points was a gift, and whether it was reportable.
- Ms. Bonivita was not exempt from the Code, although her relative was not a lobbyist.
- In the response letter, Ms. Bonivita was informed that the Code had not been violated, and that the value of the two-day hotel stay was reportable.

MOTION to approve staff's recommendation on RQO 11-017. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

VI.a. RQO 11-009

(CLERK'S NOTE: Manuel Farach said he would leave the dais to abstain from voting on the item. Ronald Harbison remained on the dais but he said that he would also abstain from the discussion and vote.)

Mr. Johnson stated that:

- Processed advisory opinion RQO 11-009 involved Sarah Alsofrom who, though not a County employee, served on the Education and Government Programming advisory board.
- Ms. Alsofrom declined from a friend employed by FPL an awards banquet ticket valued at \$125. Although FPL was a lobbyist in the County, it did not lobby the advisory board that Ms. Alsofrom served.
- Based on the Code, this case was exempt. Staff recommended that the gift was reportable, although not prohibited.

MOTION to approve staff's recommendation on RQO 11-009. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 3-0. Manuel Farach and Ronald Harbison abstained.

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 11-010

Mr. Johnson stated that:

- Proposed advisory opinion RQO 11-010 involved Tammi Wilkins, a County employee served as a board member and officer on the Duo Center non-profit organization (non-profit). She asked whether she could continue to serve as a board member, since the non-profit accepted summer camp vouchers from the County's Human Services department.
- The Code did not prohibit an employee from serving as a non-profit officer. However, Ms. Wilkins could not use her official County position to financially benefit of the organization.
- Ms. Wilkins was not permitted to solicit or accept gifts on behalf of the organization in excess of \$100 from a lobbyist, principal, or employer of a lobbyist. This fact-scenario did not involve fundraising.

VIII.a. – CONTINUED

Dr. Fiore asked whether Ms. Wilkins' employment benefited her husband, who was the officer and director of the organization.

Mr. Johnson said that one of the conclusions was that an individual's public position could not be used to benefit their spouse or the non-profit boards on which they served.

Mr. Reinhart stated that as a County employee, Ms. Wilkins was not involved in any decisions making concerning the non-profit in question.

Mr. Johnson said that Ms. Wilkins played no role with the summer program, vouchers, or those departments. He added that the Code did not prevent an employee from volunteering, other than fundraising.

MOTION to approve staff's recommendation on RQO 11-010. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 4-0. Manuel Farach absent.

VIII.b. RQO 11-012

(CLERK'S NOTE: Mr. Farach rejoined the meeting.)

Mr. Johnson stated that:

- Proposed advisory opinion RQO 11-012 involved Phil Donovan, an employee of the City of Lake Worth Utilities Department (LWUD), whose official duties included maintaining and testing water quality.
- Mr. Donovan asked whether he could enter into an outside contract with "consecutive" water utilities, which purchased water from LWUD for resale to homeowners.
- Staff recommended prohibiting Mr. Donovan from working privately with "consecutive" water utilities, because there was a Code nexus and a conflict of interest.

Judge Rodgers said that he did not agree with Mr. Johnson's providing advice in the opinion letter to Mr. Donovan because future implications could arise for the COE. Mr. Johnson stated that he would excise the section noted by Judge Rodgers in the response to the opinion letter.

VIII.b. – CONTINUED

MOTION to approve RQO 11-012 and to delete the next-to-last paragraph in the opinion letter. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

VIII.c. RQO 11-013

Mr. Johnson stated that:

- Proposed advisory opinion RQO 11-013 involved David Schwartz, Project Coordinator for the County's Department of Housing and Community Development (HCD).
- Mr. Schwartz asked whether the County was prohibited from granting the relative of a municipality's vice-mayor loan assistance for a property, as well as rehabilitation inspections for code compliance.
- Staff determined that there was no prohibition in the County by policy or Code, to extend such assistance because currently, the City of Pahokee (Pahokee) was under COE jurisdiction.
- The COE could not make a recommendation regarding the transaction or the relationship between the applicant and the municipal official.

Mr. Reinhart asked whether staff's recommendation to deny the opinion was made because the Code's definition did not apply.

Mr. Johnson stated that:

- During the course of the investigation, an individual from the jurisdiction disclosed that the relative was the sister-in-law of Pahokee's vice-mayor.
- In the future, if Pahokee came under the Code's jurisdiction the COE could render a decision on whether the vice-mayor obtained a financial benefit for a covered relative.

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

Mr. Farach said that if the COE rendered a decision at today's meeting, it could be modified in May 2011, when the Board of County Commissioners (BCC) adopted the proposed Code provisions. He suggested that the COE delay making a decision at this time on the opinion before them.

VIII.c. – CONTINUED

Mr. Johnson stated that he had discussed the matter at length with the chair. By not approving the request, the COE's actions could cause the official's relative to be ineligible for the program, he added.

(CLERK'S NOTE: Mr. Reinhart rejoined the meeting.)

MOTION to approve RQO 11-013 with the proviso that staff revise the proposed opinion to reflect that in the near future the City of Pahokee could fall under the Code's jurisdiction; and if so, the COE could not advise how they would rule on the matter in the future. Motion by Manuel Farach, and seconded by Bruce Reinhart.

Mr. Johnson asked the COE to clarify whether the motion was to approve the section of the response letter stating that no Code prohibition existed. He said that the letter could state that the issue could be considered later by the COE.

Mr. Farach stated that the parties should not be given advice, but that they could be informed that the circumstances surrounding the opinion could amount to a Code violation in the future.

Mr. Johnson asked whether this advisory opinion could be brought back to the COE in May 2011 for discussion.

MOTION WITHDRAWN.

(CLERK'S NOTE: At the direction of the chair, item RQO 11-013 was tabled until the next COE meeting.)

Mr. Johnson said that:

- If the loan was not processed, then the person who requested the opinion could ask that the matter be readdressed at the COE's May or June 2011 meeting.
- If the COE rendered a decision and the loan was issued, the COE could not modify the opinion's decision later.
- The effective date of the new referendum Codes determined enforcement.

IX. PUBLIC COMMENT – None

X. 2012 COMMISSION ON ETHICS BUDGET

Mr. Johnson stated that the COE had not requested additional funds since forecasting the budget for the 2010 fiscal year (FY). He said that:

- Initially, the need to hire additional staff was circumvented because the workload did not require it.
- When the BCC adopted the referendum, significant increases in workload would warrant the need for additional staff.
- The ED's office had a surplus of \$66,000 in savings from FY 2010.
- The ED's FY 2011 surplus could be at least \$75,000.
- A poll was conducted to count the number of part-time employees, full-time employees, and elected officials in the 38 municipalities:
 - The ED had jurisdiction over 5,800 County staff.
 - Within the municipalities, there were 8,000 full-time employees, 1,000 officials and advisory board members, and 194 elected officials.
 - With the addition of Lake Worth, Lantana, and Boynton Beach staff, the ED's workload would more than double.
 - The ED's office would also be responsible for training staff, and processing complaints and advisory opinions.
- The ED was required to account fiscally for additional staff vacancies even when positions were not filled immediately.
- There was sufficient staff with the ED, COE Investigator Mark Bannon, and Ms. Rogers to process advisory opinions.
- There was a need for another investigator position based on the number of current inquiries received from the municipalities. The position could be filled by summer's end, would cost approximately \$70,000, and would not result in increased ad valorem taxes.

X. – CONTINUED

- The ED office's FY 2013 budget would be need-based.
- In the past, a part-time staff position was created and filled, and in the future, a data entry position would need to be filled to manage the ED's document database.

Assistant County Administrator Brad Merriman stated that County employees' annual salaries were based on approximately 2,080 gross work hours per year.

Mr. Harbison suggested calculating the ED's staffing needs by tabulating the projected workload and hours needed to process advisory opinions.

Mr. Johnson said that the COE was in the process of crafting hourly, monthly, or annual scaled service fees for non-municipal organizations.

Mr. Harbison commented that it would be helpful if the ED developed performance measures in incremental units to determine overall workload and budget forecasts.

Mr. Johnson stated that:

- Community Redevelopment Agencies (CRA) and the Solid Waste Authority functioned differently from the municipalities.
- The ED had not contemplated that its jurisdiction would extend beyond the municipalities unless by signed agreement.
- Jurisdictional negotiations were ongoing with Boynton Beach regarding its CRAs.
- Channel 20 would be recording ED training sessions for use as Web-based ethics classes and compliance measures.

Mr. Merriman stated that all budgets were subject to the approval of the BCC, and that Mr. Johnson's budget recommendation could be submitted for its consideration.

X. – CONTINUED

County Budget Division Director John Wilson said that:

- The ED's office had a carry-forward in FY 2010. It would also have a carry-forward in FY 2011 to balance its budget.
- Typically, County departments were not permitted to retain any surplus to fund the next FY. The County's FY 2012 budget would include the ED's request for additional staff.
- The ED's gross budget would increase until the office's only revenue source was the general fund.
- The COE, listed as a separate funding entity on the County's budget, had a budget document bearing its mission and number of positions.
- The ED's budget was formulated as a special revenue fund. By the end of 2011, a government accounting standards board ruling would restrict certain revenue levels, and prohibit the retention of a separate fund.
- Once instituted, the ED would be prohibited from retaining a special fund, and its revenue would be transferred to the general fund resulting in a negative fund balance.

Mr. Merriman stated that the ordinance as drafted stipulated that the County funded the COE's expenses.

MOTION to approve staff's recommendation for the Commission on Ethics' 2012 budget. Motion by Ronald Harbison, and seconded by Bruce Reinhart.

PUBLIC COMMENT: Suzanne Squire.

(CLERK'S NOTE: The gavel was passed to the vice-chair.)

MOTION to receive and file the document submitted by Ms. Squire. Motion by Bruce Reinhart, and seconded by Robin Fiore.

(CLERK'S NOTE: The gavel was returned to the chair and the commission was polled.)

X. – CONTINUED

Mr. Farach commented that the document submitted by Ms. Squire had no relevance to the COE's 2012 budget. He said that the people's work was being overshadowed. He suggested that Ms. Squire file a complaint, if she believed that Commissioner Aaronson committed an ethics violation.

UPON POLLING THE COMMITTEE, the motion to receive and file carried 3-2. Manuel Farach and Ronald Harbison opposed.

ADDITIONAL PUBLIC COMMENT: Alexandria Larson.

Mr. Johnson stated that he had been fiscally responsible with the budget for his office, which by County Charter, required adequate funding.

UPON CALL FOR A VOTE, the motion for the 2012 budget carried 5-0.

XI. REVIEW OF PUBLIC COMMENT PROCEDURES – Pages 2-5

XII. REVIEW OF PROPOSED COUNTYWIDE COMMISSION ON ETHICS AND CODE OF ETHICS ORDINANCES

(CLERK'S NOTE: Judge Rodgers left the meeting.)

Mr. Johnson said that:

- A substantive change made to the Code by the ordinance drafting committee was the ability to withdraw a requested advisory opinion 10-days prior to a COE meeting.
- On April 8, 2011, he intended to propose to the drafting committee that the definition of vendor be modified to include any person or entity with a pending bid, proposal or request before the board or municipality, when applicable.
- Gifts in excess of \$100 from vendors with active contracts or vendors with proposals before a governmental body were prohibited.
- Law firms that represented municipalities were vendors of that government and fell under the jurisdiction of the Code with respect to the gift law.

XII. – CONTINUED

- Imported Code language, “through the County or municipality as applicable,” stipulated the conditions under which a vendor was affiliated with a governmental entity.

(CLERK’S NOTE: Judge Rodgers rejoined the meeting.)

Mr. Reinhart stated that if the gift law were limited to the governmental entity that had a direct interaction with a vendor, then the affiliation should be clarified in the Code.

Mr. Johnson said that the term “as applicable” related to a municipality or the County, and would be discussed with the ordinance drafting committee.

Mr. Johnson stated that:

- The Code was transformative, but the reality was that there would be willful violators of its rules.
- Misuse of office and conflict-of-interest Code provisions served to hold officials and employees accountable for their actions.

Remainder of page left blank intentionally.

XII. – CONTINUED

- Section 2-444, Line 337 of the current Code as proposed stipulated that:

“a. Personal Gifts. All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100.00) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100.00 in accordance with subsections (a)(1) and (b)(1).”

- Language proposals would be added to the Code for relationships that were in place prior to an employee's hire or election to a governmental entity.
- Employees and officials were required to report prohibited gifts and identify gift sources.
- Neither vendors nor lobbyists had specific reporting requirements.

Judge Rodgers stated that he preferred flexible Code language so that the COE could interpret and make determinations of violations more freely.

XIII. EXECUTIVE DIRECTOR COMMENTS

XIII.a. Advisory Board Update

Mr. Johnson said that:

- Mr. Farach had been reviewing the advisory board waivers and reviewing letters to determine whether any issues were prevalent.
- Mr. Berger recommended solutions to strengthening the Code by banning vendors with conflicting contracts from serving on advisory boards or from working with agencies that served the board.
- Initially, advisory boards could waive option-A, financial benefit. However, the option was later withdrawn and could no longer be waived by political entities.
- Advisory board members with conflicts of interest were required to request supermajority waivers.

Mr. Berger explained that:

- An advisory board that was connected in any way to a fellow board member's contract could not be waived; however, the relationship had to be disclosed publicly as an agenda item.
- The ordinance drafting committee and the COE were not examples of pure advisory boards.
- Pure advisory boards such as the County Zoning Commission were created by resolution, assigned specific duties, and defined areas of focus.

Mr. Johnson said that:

- Carveouts would be added to the Code for public events hosted by entities such as the Sports Commission and the Business Development Board (BDB), whose roles were to collaborate with elected officials and businesses to foster business growth in the County.
- Examples of non-public events included private meetings hosted by prospective vendors' intent on bringing new business to the county.

XIII.a. – CONTINUED

- Disclosure requirements could be vetted in the future.
- As per the gift law, the BDB was prohibited from giving gifts in excess of \$100 for service contracts with the County.

Mr. Berger said that certain aspects of business-recruiting prospects were exempt from disclosure by State law.

Mr. Reinhart suggested that private meetings could either be prohibited or permitted with the provision that they were noticed publicly.

Mr. Johnson explained that if County commissioners or municipal officers solicited on behalf of its government, their actions were exempt from the Code.

Mr. Harbison commented that he did not want the COE to impede the county's economic development. He expressed concern with lobbyists issuing tickets for business-related events, and he said that he did not have the same concern for the BDB.

Mr. Johnson proposed an amendment to the Code stipulating that vendors and lobbyists were prohibited from providing event tickets to County employees and officials. Mr. Harbison said that the county commission could solve the issue by appropriating a line item on their budget for meals and events. He added that the need for confidentiality at some point during this process was necessary.

Mr. Berger explained that job-incentive-growth contracts often involved government officials because of the associated incentives for qualified industries such as tax breaks and job-growth grants. He said there was a point in the process where all activities would be disclosed.

XIII.b. Charitable Solicitation

Mr. Johnson asked whether an official, employee, charitable board member, or organization member could be involved in fundraising efforts where vendors were associated. He said that:

- The ordinance drafting committee would likely adopt the State statute through carveouts for charitable solicitation as exceptions.
- There was a prohibition against accepting gifts in excess of \$100 from a lobbyist, principal, or employer of a lobbyist.

XIII.b. – CONTINUED

- Code carveouts did not apply to solicitations for 501(c) (3) organizations.
- Charitable and religious organizations were permitted to engage in solicitation.
- Direct solicitation could be banned, but indirect solicitation would be difficult to vet.
- The State statute stipulated that:

A reporting individual, procurement employee, or any other person on his behalf was prohibited from knowingly accepting directly or indirectly from a lobbyist who lobbies the reporting individuals or procurement employer's agency directly or indirectly on behalf of the partner, firm, employer or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100. However, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of the charity, the person receiving the gift shall not maintain custody of the gift for any period of time.

Judge Rodgers expressed support for the State's language and agreed that the COE should adopt that Code language.

Mr. Reinhart said that the Code would not solve every situation and that there should be some flexibility for charitable organizations to solicit.

Mr. Harbison remarked that it might be best to address indirect solicitation with the COE as opposed to both indirect and direct solicitation.

Mr. Berger said that at the State level, identifying constitutional threat and corrupt conduct was addressed in State courts. He added that State courts deemed that State Code violations could not be based on the assumption that public officials would grant future favors in exchange for gifts.

Mr. Farach expressed concern about charitable carveouts since the county's history was rooted in gift-related corruption.

Mr. Reinhart said he intended to enforce the adopted ordinance.

(CLERK'S NOTE: Telephonic communication was lost with Dr. Fiore.)

XIV. PUBLIC COMMENTS

DISCUSSED: Various Topics.

Suzanne Squire said that if no gifts were issued to officials, the problem of corruption would not arise and that it was difficult for the BDB not to accept gifts since its role was to foster the county's economic growth. She commented that she preferred the previous COE mission statement listed in its bylaws since the current mission statement was diluted. She stated that the March 3, 2011, meeting minutes did not accurately portray her statement. She said that waiver counts should be used to ensure total board independence, and that the County should not pursue grant funds since they interfered with its independence.

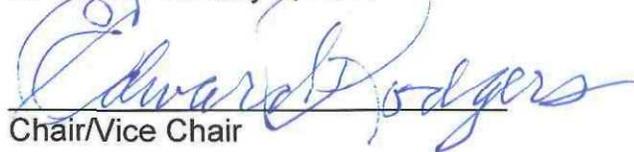
Mr. Reinhart asked Ms. Squire to identify the Code provision she used to opine that Commissioner Aaronson had committed a violation so that an ethics complaint could be self-initiated. Otherwise, he added, no COE action was warranted since the commission operated with limited authority that was based on ordinance precepts. He concluded that the COE mission statement could not be used as a basis for filing an advisory opinion.

Alexandria Larson said that the BDB hosted a party at the Breakers Resort and the grand jury report did not cover the public's areas of concern.

XIII. ADJOURNMENT

At 7:22 p.m., the chair declared the meeting adjourned.

APPROVED: May 5, 2011


Chair/Vice Chair