

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. **CALL TO ORDER:** May 5, 2011, at 3:03 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 – Arrived later
Dr. Robin Fiore
Ronald Harbison – Absent
Bruce Reinhart, Esq.

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 asked audience members to silence their cell phones and submit public comment cards to staff, and to indicate the agenda item they intended to address. He said that public comment would be limited to a maximum of three minutes per speaker and that comments should be relevant to the item discussed. He added that the commission's process should be respected.

(CLERK'S NOTE: Manuel Farach joined the meeting.)

IV. **APPROVAL OF MINUTES FROM APRIL 7, 2011**

Manuel Farach suggested that changes be made to the April 7, 2011, meeting minutes. He said that on page 3, the first filled bullet point, the word "deposed" should be changed to "sworn."

Judge Rodgers asked that the proper corrections be made to the minutes.

IV. – CONTINUED

Alan Johnson, Esq., Commission on Ethics (COE) Executive Director (ED), stated that he agreed that the suggested change was more appropriate, and he added that he would need to review the recording from the April 7, 2011, COE meeting because he could have used the word “deposed.” He said that as a part of the discovery process, the due process rights of a respondent was to depose witnesses; therefore, he could not say with certainty that he did not use the word “sworn,” which would have also been appropriate. He recommended that staff review the recording from the previous COE meeting and correct the minutes with the proviso that if the minutes needed to be corrected, it would not be necessary to bring the matter back to the COE for approval.

Mr. Farach stated that on page 5, the second “CLERK’S NOTE” which read, At the attempt of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum, should be corrected to read, At the threat of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum.

Dr. Robin Fiore said that she seconded the changes to the minutes’ language as recommended.

Mr. Johnson stated that he agreed with the recommended corrections.

Judge Rodgers said that the changes as discussed would be made to the minutes.

Mr. Farach stated that:

- On page 16, the vote which read, UPON POLLING THE COMMITTEE, the motion CARRIED 3-1. Ronald Harbison and Bruce Reinhart opposed, and Edward Rodgers abstained, should be verified upon reviewing the recording from the April 7, 2011, meeting since the votes carried were mathematically incorrect.
- There could be a typographical error with the votes, but since he was not able to review the recording himself, he asked that the vote be reviewed.

Bruce Reinhart stated that since he made the motion he would not have voted against the item. He said that he recalled the vote as 3-1 with Ronald Harbison opposed. Mr. Farach stated that Mr. Reinhart’s explanation would clarify the discrepancy.

IV. – CONTINUED

Mr. Johnson asked that a provisional vote be made so that a review of the recording from the COE's April meeting could be conducted during today's meeting. He asked that the matter be tabled until the end of the meeting.

Judge Rodgers stated that the corrections to page 16 would be tabled until the end of the meeting by acclamation and without a vote from the commission.

(CLERK'S NOTE: See page 24 for further discussion on item IV.)

Mr. Farach suggested additional changes as follows:

- On page 21, first bullet, the word, he, should be stricken, and the sentence should read: Initially, the need to hire additional staff was circumvented because the workload did not require it.
- On page 24, first paragraph, second sentence that read, He said that the people's work was overshadowed, should be changed to, He said that the people's work was being overshadowed.
- On page 25, the fourth bullet point lacked clarity unless it was a clause or a portion of a sentence. The language stated, Line 370 of the Code addressed whether personal gifts carveouts would exist. It read, Giving a gift in excess of \$100 who is a prospective vendor seeking to do business with the official or the employee's governmental entity.

Remainder of page left blank intentionally.

IV. – CONTINUED

Mr. Johnson read Section 2-444, line 337 of the current COE Code into the record as proposed. He said the language was appropriate where personal gift carveouts existed. The Code language was read as follows:

“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).”

Mr. Farach asked Mr. Johnson whether the entire language he read should be added to clarify the record. Mr. Johnson replied that in the abundance of caution, the entire provision should be added to the April 7, 2011, meeting minutes.

MOTION to approve the April 7, 2010, meeting minutes as amended, with the corrections identified by Manuel Farach, and subject to the review of the meeting recording for the proposed corrections to page 16, that were tabled earlier at today’s meeting. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

V. PUBLIC COMMENT REVISION TO BY-LAWS

Mr. Johnson stated that:

- Staff recommended that Section 10 of the COE by-laws be created for public comment. The language would read as follows:

“Public comment is permitted on all agenda items with the exception of probable cause proceedings and the adjudicatory portion of final hearings involving complaints before the commission. The chairperson may establish and enforce rules pertaining to the orderly conduct of public comment, including time, manner, and decorum.”

- The staff analysis concluded that:
 - Significant due-process concerns existed regarding the executive session probable-cause hearing and the guilt phase in the final hearing.
 - Valid concerns included members of the audience making irrelevant, prejudicial, or inadmissible statements, which the respondent was not privy to in advance; or witnesses the respondent did not have the opportunity to depose.
 - The constitutional rights of respondents should outweigh the rights of public commentators until the trial phase concluded.
- Public comment could be permitted after the final hearing if the COE ruled that a respondent had violated the Code and an appropriate sanction or fine was imposed.

Dr. Fiore stated that public comment should not be permitted during final hearings, but comments could be permitted after the COE made its ruling.

Mr. Reinhart said that he agreed with Dr. Fiore. He suggested that members of the public communicate with the advocate to convey their information as opposed to allowing the public to make opinions on sentencing.

V. – CONTINUED

Mr. Farach stated that:

- Although he understood the concerns of the commission, it was the public's right to comment on cases prior to the COE handing down a sentence.
- The public should be permitted to make comments irrespective of the COE's final sentence or punishment.
- He recognized the risk of turning the proceeding from one with decorum and professionalism to one without those elements. He was concerned that the public would not be allowed to voice opinions prior to the COE making a decision.
- Had it not been for the chair's ability to control the meeting's decorum, he would not have supported the notion of permitting public comment prior to the sentencing phase.

Dr. Fiore said that in the past, public comment had often been irrelevant to the items discussed. She stated that it was not the COE's role to permit public comment that subjected the respondent deemed guilty of a Code violation to be berated.

Mr. Johnson stated that he was not thinking that necessarily the public would be asking for a harsh sentence, but people may be speaking on behalf of the respondent.

Mr. Reinhart said that under the commission's current rules, the accused party had a right to offer witnesses in mitigation, just as the advocate, a party to the proceeding, had the right to offer witnesses in aggravation of sentence. He stated that if the matter was not funneled through to the individuals who were the official parties to the proceeding, then the case could be opened up to abuse. He added that by allowing the public's voice through the appointed advocate, the accused party could be safeguarded from unfair treatment.

MOTION to approve the recommendation to exclude adjudicatory actions and hearings from public comment. Motion by Robin Fiore, and seconded by Bruce Reinhart.

V. – CONTINUED

Mr. Reinhart stated that the current by-laws draft stated that the chair could establish and enforce rules pertaining to orderly conduct. He expressed concern about the term, rules, which related to a standard set of procedures that would be applied across the board, or an inference could be drawn that the chair would have the discretion to control the commission's proceedings. He said it was foreseeable that members of the public or parties to a proceeding would voice opposition about impartiality or preferential treatment toward being permitted to speak at a meeting. He said that since the commission had no established rules in the by-laws, and if they were redrafted, then staff should consider that point.

Mr. Johnson asked for clarification since the type of rules envisioned by the new provision would be three minutes, or two minutes. He said that would be the type of rule the commission would then promulgate.

Mr. Reinhart suggested the following by-laws language, the chair shall have discretion to limit public comment as necessary to maintain decorum and save time. He cautioned the commission against enforcing a rule that the commission had not formally promulgated. He said that if staff redrafted the by-laws, then his proposed revision should be considered. Mr. Johnson said that the language could be vetted at today's meeting.

Mr. Reinhart stated that he preferred that a final decision be made when the entire commission was present, especially when there were competing opinions on the matter. He suggested that the matter be tabled until the next meeting.

AMENDED MOTION to table item V., Public Comment Revisions to By-Laws, until the June 2, 2011, Commission on Ethics meeting. Motion by Bruce Reinhart, and seconded by Robin Fiore.

Dr. Fiore asked how the commission would proceed if a hearing was scheduled for the COE's June 2011 meeting. Mr. Reinhart responded that the commission could use existing Code rules.

UPON CALL FOR A VOTE, the motion carried 3-1. Edward Rodgers opposed and Ronald Harbison absent.

VI. VOTING CONFLICTS

VI.a. COMMISSION ON ETHICS REQUEST FOR ADVISORY OPINION FROM ATTORNEY GENERAL'S OFFICE (REQUESTED BY COMMISSIONER FARACH)

Although no true voting conflict existed, Mr. Johnson asked that an illegal vote from the April 7, 2011, meeting be readdressed since there was an issue as to quorum, because there were only two commissioners physically present at the time of the vote and there needed to be three. He added that State Statute (Statute) 286.012 stipulated that abstention from voting was permissible only when a financial conflict of interest existed.

Dr. Fiore said that she had not voted because of insufficient information. She added that she had a right to abstain instead of being rushed to vote.

Judge Rodgers stated that he had abstained from voting because the case involved his daughter-in-law.

Mr. Johnson said that:

- He reviewed 28 attorney general (AG) letters and that there were 300 COE "mentions" that did not allow a non-financial exception, unless the nepotism statute was violated.
- None of the 300 mentioned allowed non-financial abstention except where by voting, the elected official would have violated that law. The nepotism statute stipulated that where there was not a financial interest, the vote would have violated the nepotism statute since the COE could not use §286.012 to violate the law.
- With regard to the adjudicatory and quasi-judicial functions of a hearing or probable cause determination, staff believed that if a bias against the respondent existed, constitutional issues could be raised that superseded Statute 286.012.
- The first issue was whether staff should send a letter to the Attorney General's Office (AGO) and request an advisory opinion regarding quasi-judicial COE hearings and the conflict that would be raised by a bias relating to due process conflicts within the Florida constitution and the United States Constitution.

VI.a. – CONTINUED

- The second issue was whether carveouts existed for non-adjudicatory and non-quasi-judicial proceedings. After consulting Charles “Chris” Anderson, Florida COE attorney, both staff and Mr. Anderson shared the opinion that those proceedings were subject to Statute 286.012.
- The Florida COE stipulated that adjudicatory and quasi-judicial issues should be brought to the AG for review.

Judge Rodgers stated that it was unfortunate that committee members could not abstain from voting on an item because they handled a legal matter involving a respondent in a COE case. He said that the rule narrowed the commission’s ability to be fair.

Mr. Johnson stated that the District Court of Appeals (DCA) supported the AG. He said that in one case, there was a physical altercation between a board member and an applicant, and the board member was required to vote because the statute did not provide a leeway to abstain, even in the case of a bias. He added that he would research whether there was a process to go to the DCA after getting an opinion from the attorney general to direct the commission to vote, even if it violated the due process rights of the respondent.

Mr. Farach stated that:

- The COE was in the uncomfortable position of either following the statute and possibly creating an appearance of impropriety, or intentionally violating the statute in order to avoid the appearance of impropriety.
- Although the intent of Statute 286.012 was to prevent board members from purposely avoiding voting on agenda items, the COE was governed by different standards than most political bodies. As a non-political body, it was required to avoid the appearance of impropriety.
- The way that the COE ordinance and Statute 286.012 were written posed a problem.
- Unless and until he was instructed by the AG to vote on every agenda item, he would abstain from voting when there was an appearance of impropriety. To vote otherwise would diminish the integrity of the commission.

VI.a. – CONTINUED

Judge Rodgers asked hypothetically, how a case would be handled if a senior partner of a commission member represented one of the parties in an advisory opinion.

Mr. Farach stated that an economic interest would then be present and he would not only abstain from voting, but he would file State form 8.B., to acknowledge the conflict of interest existed.

Mr. Johnson said there were copies of the State form on the COE website. He added that the form could not be filled-out unless a financial benefit existed, or if the parties that benefitted were identified.

Mr. Reinhart expressed concern about the nepotism statute's interpretation. He said that even if an actual conflict of interest existed, one could be compelled to vote if there was not a financial conflict. For example, he said, if it were common knowledge that he hated his neighbor, the act of presiding over a case involving his neighbor was inappropriate. He asked whether there was a Code provision that could preclude the commission from voting. He also asked whether the Code could be trumped by §286.012, or if there was a basis to vote under the local ordinance.

Mr. Johnson explained that:

- State law superseded local ordinances, and constitutional laws superseded State statutes.
- The AGO opined that the nepotism case discussed earlier in the meeting could not be used to violate another statute.
- There was no penalty for violating the statute although the statute had references to misfeasance.
- If a committee member opted not to vote, a misfeasance claim could be filed to remove the individual from the committee.

VI.a. – CONTINUED

Dr. Fiore stated that she had not intended to trivialize one's conscience, but there were instances in which a board member simply could not vote on an agenda item if the reasons were valid and stemmed from professional, cultural, and personal values. She said ethics commissions should respect the reasoning associated with those principles. She added that her decision to abstain from voting for reasons of information would not waver although she had a better understanding of the statute.

Mr. Farach said that he made the request so that the commission could get some clarification on the matter. He said that he had no doubt that the issue had been extensively researched, but that there could be someone at the AG to shed more light on the issue.

Dr. Fiore proposed that all commission members should vote, even when a conflict existed. She said that the commissioners with the conflicts could vote with the commissioners that voted in the majority, and state that they were making the vote for purposes of procedure since their votes would not influence the motion's passage. She concluded that the dissenting commissioner's vote would be meaningless unless two or more board members made opposing votes, which would then create a procedural dilemma.

Mr. Farach said he had not intended to impose on the discretion of each commissioner when they voted. He reiterated that his concern was to get clarity from the AGO. He added that if the commission were directed to vote on an item even with an appearance of impropriety, he would follow the law.

Dr. Fiore said that she disagreed that following the statute took precedence. She said that the AG's view would not change her opinion. She added that there was no purpose for the request because the AG would likely direct the COE to follow the law. Mr. Farach responded that he could not presume the AG's response and that he wanted clarity on the issue.

MOTION to send a letter to the Office of the Attorney General as set forth in agenda item VI.a., and seek an opinion as to the portions, times, or situations where State Statute 286.012 either would or would not apply to the Commission on Ethics. Motion by Manuel Farach, and seconded by Bruce Reinhart.

VI.a. – CONTINUED

Mr. Johnson stated that:

- The AG would not accept the commission's request unless a majority vote was reached by the commission.
- For clarification, there were two issues at hand, whether there was a distinction between quasi-legislative and quasi-administrative matters.
- The only quasi-judicial functions performed by the commission were code enforcement actions, probable cause hearings, and final hearings.
- There was a possibility that the AG would review the request in terms of the due process rights of the respondent, and the commission could receive a favorable ruling.

Mr. Reinhart said that he was hopeful that legislators would amend Statute 286.012 to excuse public officers with conflicts of interest from being required to vote.

UPON CALL FOR A VOTE, the motion carried 3-1. Robin Fiore opposed and Ronald Harbison absent.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. RQO 11-018

VII.b. RQO 11-019 – Pages 13-14

(CLERK'S NOTE: Edward Rodgers passed the gavel to vice chair Manuel Farach.)

MOTION to pull item VII.b. RQO 11-019 from the consent agenda. Motion by Edward Rodgers, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

(CLERK'S NOTE: See page 14 for the consent agenda vote on item VII.)

VIII. ITEM PULLED FROM CONSENT AGENDA

VII.b. RQO 11-019

Judge Rodgers said that:

- He disagreed with the remaining COE members' decision to disallow a complaint to be withdrawn at the request of the claimant.
- Penalties could be imposed for a complaint's withdrawal during certain stages of the proceedings.
- It was a violation of the complainant's rights to prosecute or issue an opinion on a case that the complainant withdrew.
- Withdrawn opinions could be placed into a closed file since the mere filing of a case could irreparably damage the claimant.

Mr. Johnson stated that the newly adopted Code permitted a claimant to withdraw an advisory opinion up to 10 days prior to a commission meeting. He said that this opinion was completed based on the prior Code and because of the commission's prior vote.

Judge Rodgers proposed that the opinion should be reconsidered and placed into the "never happened" file.

Mr. Johnson said that the opinion could have been withdrawn since the request to withdraw was made more than 10 days prior to the commission meeting.

Dr. Fiore asked about the claimant's basis for withdrawal.

Megan Rogers, COE Staff Counsel, stated that:

- Walt Smyser submitted an e-mail to the COE and in response, he was asked to provide additional information.
- In his second email, Mr. Smyser stated that he no longer wanted to pursue the matter and he asked that the request be withdrawn.
- An e-mail was sent to Mr. Smyser from staff informing him that the Code prohibited opinions from being withdrawn and an advisory opinion would be investigated and issued.

VII.b. – CONTINUED

- The claimant was not advised on the matter, but he was asked whether he had knowledge that the company identified in the opinion contracted with the City of Lake Worth (Lake Worth).
- Mr. Smyser responded via e-mail that he did not know, and in a follow-up email from COE staff, he was asked to contact the city administrator to obtain that information.

Mr. Johnson stated that the rule for withdrawals could be amended by the COE. Mr. Reinhart added that a Florida Sunshine Law conflict could arise if the commission proceeded with voting on items that were not noticed on the meeting agenda. He suggested that the matter be discussed at a future meeting.

Dr. Fiore asked whether the 10-day withdrawal rule could be adopted sooner rather than later, since the new Code reflected the 10-day rule. She suggested that the commission's procedures be amended at the next COE meeting if due notice was given.

Mr. Reinhart stated that the response letter was consistent with the COE's currently existing rules of procedure.

MOTION to approve the opinion on item VII.b., RQO 11-019, as written, and readdress the matter at the next Commission on Ethics meeting on June 2, 2011, upon reconsideration of the Rules of Procedure. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 3-1. Edward Rodgers opposed and Ronald Harbison absent.

Mr. Farach noted that in the fourth paragraph of the response letter for RQO 11-019, the word, principle, should be changed to, principal. Mr. Johnson stated that the correction would be made.

(CLERK'S NOTE: Judge Rodgers resumed as chair. The agenda was taken out of sequence and item VII. was voted on at this time.)

MOTION to approve the consent agenda, pulling item VII.b., RQO 11-019. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

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

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 11-009 (Resubmitted from April 7, 2011)

Mr. Johnson stated that:

- Opinion RQO 11-009 was resubmitted from the April 7, 2011, COE meeting because the vote was flawed since only two commissioners were present when the vote was cast, and no quorum existed.
- Sarah Alsofrom, a non-County employee, had asked if she could accept an awards banquet ticket valued at \$125 from a friend who was employed by a lobbyist.
- The lobbying entity for whom her friend worked had not lobbied the County advisory board on which she served, or the County department under the committee's authority.
- Staff reviewed Code Section 2-444(b), which did not prohibit gifts of this nature for volunteer advisory board members. However, the gift was reportable since its value exceeded \$100.
- The vote to accept the opinion was carried 3-0 with Mr. Farach and Mr. Harbison abstaining since they served on boards with Ms. Alsofrom.
- The 3-0 vote was pulled because of the two abstentions, and since Dr. Fiore was not physically present at the time of vote.

Mr. Farach stated that he would continue to abstain from voting on items with conflicts of interest until the AG ruling was handed down. He added that he would be abstaining from voting for the reasons indicated at the April 7, 2011, COE meeting.

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

IX.b. RQO 11-013 (Resubmitted from April 7, 2011)

Mr. Johnson stated that:

- Advisory opinion RQO 11-013 involved David Schwartz, Project Coordinator for the County's Department of Housing and Community Development (HCD). He had asked whether it was appropriate to offer loan assistance to a grant applicant who was related to the vice-mayor of the municipality having jurisdiction over the application process and post-project code inspection.
- Initially, staff had opined in the proposed advisory letter that there was no Code violation because the scope of its investigation was limited to the County's involvement.
- The commission opined that since it had no jurisdiction over the municipality, it would have been inappropriate to advise the County official as to the appropriateness of the transaction.
- Staff redrafted the response letter for the commission's review to reflect that the COE could not opine with regard to the Code since the opinion was tabled at the April 7, 2011, meeting.

MOTION to approve RQO 11-013 as rewritten by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

IX.c. RQO 11-015 (Resubmitted from April 7, 2011)

Mr. Johnson asked the board to rescind the initial advisory opinion for RQO 11-015. He said that:

- The proposed letter was adopted by the commission at the last meeting on April 7, 2011.
- A member of a charitable advisory board had asked whether public employees as board members could solicit sponsors and participants for a fundraising event.
- Although the advisory board was not connected to the County or municipality, several committee members were also government employees.

IX.c. – CONTINUED

- The COE voted to make significant changes to the opinion that was submitted by staff regarding indirect solicitation.
- The commission had opined that:
 - Public officials, subject to the jurisdiction of the Code, and serving charitable boards, were prohibited from directly or indirectly soliciting sponsorships or participant donations valued at more than \$100 from persons or entities known to be lobbyists, principals, or employers of a lobbyists, if that person or entity lobbied the governmental body whom they served as an employee.
 - The prohibition extended to solicitations made by other parties, and not on behalf of the individual, but on behalf of the charitable organizations that they served.
- Staff expressed concern that the commission's interpretation could eliminate officials from serving on boards, charitable, or religious organizations that participated in fundraisers.
- The COE further opined that employees or officials who requested that their names should not be used to solicit for the charitable committees they served on were still liable since the term, indirect, applied to anyone involved in the fundraiser, or to anyone who solicited on behalf of the entire committee.

Dr. Fiore said that:

- Employees were not prohibited from serving on boards, but they were prohibited from soliciting.
- Alternatives to the issue of soliciting existed, such as opting for a leave of absence during the solicitation process, or forming sub-committees that made sponsorship requests.

Judge Rodgers stated that committees could also omit members' official titles and not attract attention to them. He said that depriving officials from serving on boards was rigid as long as the official or employee would not solicit in their official capacities. He concluded that officials should be permitted to solicit without using their titles.

IX.c. – CONTINUED

Mr. Johnson said that the issue raised by Judge Rodgers was different from a previous advisory opinion involving County Commissioner Burt Aaronson, who was asked by his synagogue to be a dinner honoree. Mr. Aaronson requested the commission's direction because the issue was whether officials could serve on a board of directors if they were making solicitations from lobbyists, principals, or employers of lobbyists.

Dr. Fiore stated that committees whose members included elected public officials could not solicit. She said that corporate entities were held to the same standards, prohibited its employees from soliciting, and required adherence to gift laws.

Mr. Johnson said that:

- He would follow the direction of the commission, but he wanted the opinion's response to reflect the will of the commission.
- His understanding of the issue from the last COE meeting was that officials would be required to leave the board in order to hold fundraisers involving lobbyists, principals, or employers of lobbyists.

Judge Rodgers suggested that officials serving on boards should not use their official titles. He said that it was dangerous if public officials either used, or allowed their official titles to be used to solicit funds for the committee they served.

Mr. Johnson read the following proposed language for the advisory opinion:

If an official served on a board for a non-profit organization and fundraising was being held, then that official could not solicit; could not allow anyone to solicit on their behalf; and, could not permit their name to be used in connection with the solicitation, if that solicitation involved lobbyists, principals, or employers of lobbyists for gifts valued more than \$100.

Mr. Johnson said that the newly adopted Code permitted transparent and documented direct solicitation.

Dr. Fiore proposed adding language stating that officials could not participate in any form of solicitation such as creating lists or making introductions.

IX.c. – CONTINUED

Judge Rodgers commented that violating such conduct was actionable to the point of removing solicited funds.

Mr. Johnson asked the commission for direction on drafting the opinion.

MOTION to direct staff to rewrite proposed opinion RQO 11-015 to reflect and explain that under the Code of Ethics there shall be no direct or indirect solicitation, and no use of the County official, employee, or covered person's title. The covered person should not be involved in the act of direct fundraising. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

Mr. Farach asked that the word, advertizing be changed to, advertising on the second page, first paragraph of the opinion letter. He added that on the third page, second full paragraph, the language, be not prohibited, should be changed to, are not prohibited.

Mr. Johnson stated that the vote taken on agenda item RQO 11-015 at the April 7, 2011, COE meeting should be rescinded by the commission.

MOTION to rescind the April 7, 2011, vote made by the Commission on Ethics for advisory opinion RQO 11-015. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

IX.d. RQO 11-020

Mr. Johnson said that:

- Proposed advisory opinion RQO 11-020 involved Clark Bennett, a County vendor, who also served on a non-profit organization's board of directors. He asked whether a conflict of interest existed since he served on a board that applied to and received grant funding from the County.
- Staff had prepared a response letter only in relation to the Code, which had no prohibitions against vendors entering into contracts or transactions with the County through more than one private entity.
- Staff recommended that vendors' inquiries should be directly related to the Code based on Section 2-448 and Section 2-260.9.

IX.d. – CONTINUED

MOTION to approve staff's recommendation on RQO 11-020 as written. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

X. CLARIFICATION OF INFORMATION PROVIDED TO THE PALM BEACH POST BY THE CITY OF RIVIERA BEACH (REQUESTED BY COMMISSIONER RODGERS)

Mr. Johnson said that:

- City of Riviera Beach (Riviera Beach) Attorney Pamala Ryan had contacted him regarding funds that its city council had received from a contracted vendor for use as a discretionary fund.
- He had responded that the COE had no jurisdiction over Riviera Beach and that he could not opine as to whether a violation of the Code had occurred.
- He had forwarded Ms. Ryan relevant pages of the 2009 grand jury report regarding discretionary funds and suggested that she review the document.
- He told Ms. Ryan that the issues contained in her inquiry were Code-related and could become an issue once Riviera Beach came under the jurisdiction of the Code.
- Approximately one month later, an article was published in the *Palm Beach Post* indicating that the ED had advised Ms. Ryan extensively about the policy.
- The press was contacted, and he believed that the matter would be publicly clarified since he asked that the facts be corrected in a follow-up article.

Judge Rodgers stated that:

- In the *Palm Beach Post* article, Ms. Ryan gave the appearance that Mr. Johnson and the COE had agreed with, provided information relating to, and authorized Riviera Beach's use of its slush fund.

X. – CONTINUED

- The article's depiction could cause other municipalities to follow suit by using the publication to justify their actions.
- The reporter was contacted about publishing the ED's statement, and he stated that the publication's content was satisfactory.
- Randy Schultz from the *Palm Beach Post* editorial board was contacted to aid in clarifying the point that the commission would not condone slush funds.

Mr. Johnson said that:

- Staff drafted a letter for the commission's approval and eventual dissemination to Mr. Schultz.
- Prior to speaking with Judge Rodgers about the issue, he e-mailed Ms. Ryan about clarifying the matter at the next Riviera Beach city council meeting.
- He had not followed up with Ms. Ryan to confirm that she had clarified the matter.

Dr. Fiore said that this scenario exemplified why withdrawals should not be permitted because the commission had no control over how information provided by staff would be interpreted or reproduced.

Mr. Reinhart stated that the issue was in a gray area since the commission's multi-part mission was to educate and interpret the ordinance. He said that it was foreseeable that a municipality could make an inquiry and not ask whether their concern was consistent with the ordinance. He expressed concern that the public record was not clarified, and he asked whether a general public statement would be released to the press and Mr. Schultz, who could choose not to publish the press release.

MOTION to authorize staff to send the letter as drafted by Edward Rodgers and Alan Johnson to Randy Schultz, and to recommend that the letter be issued as a public statement from the Commission on Ethics. Motion by Bruce Reinhart, and seconded by Robin Fiore.

Mr. Farach suggested that the letter also be forwarded to Riviera Beach in the event the letter was not printed or published by the *Palm Beach Post*.

X. – CONTINUED

Judge Rodgers reiterated that the record needed to be clarified so that the municipalities were not misinformed about the commission's position about slush funds.

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

XI. REVISED CODE OF ETHICS AND COMMISSION ON ETHICS ORDINANCES

XI.a. BCC Agenda Item 4.H.1.

XI.b. BCC Agenda Item 4.H.2.

Mr. Johnson stated that:

- The City of West Palm Beach had recommended several carveouts to the Code.
- The COE drafting committee voted to permit direct solicitation by employees and officials. To promote transparency, it was required that a logbook be created to document the date, official, and contribution.
- The log should be submitted to the COE within 30 days of the event, or within 30 days of the solicitation. The information would then be posted on the COE Website.

Judge Rodgers suggested that more efforts would be taken to set the COE apart from the Inspector General (IG) since members of the public often confused each entity as one and the same.

Mr. Johnson said that at speaking engagements throughout the county, he addressed the separation of functions of the IG, whose powers were to probe and issue reports, versus the COE whose powers were to act on ethics violations.

Dr. Fiore stated that:

- Although the funds in the Riviera Beach account were ultimately given to charities, the corrupt potential still existed.

XI – CONTINUED

- She was writing professionally about the purification of funds given to charities, and in the near future, a critique of the subject would be published in a journal of business ethics.

Mr. Johnson stated that:

- Any commission amendments to the Code should be submitted in the proper protocol through the referendum.
- The issue of the Code's effective date had not been settled, and he believed that on June 1, 2011, the COE ordinance should be enacted. The League of Cities had suggested October 1, 2011.
- The commission could indicate two proposed dates for the amended Code's enactment so they could be presented to the BCC.
- The IG ordinance enactment date was June 1, 2011. The County had agreed to advance reimbursable funds to that office through fiscal year 2011.

Mr. Reinhart said that he would not support Mr. Johnson's suggestions because the COE was not an elected body.

Judge Rodgers stated that the COE should indicate the ordinance's effective date since approximately one year was dedicated to its adoption. He said that if the COE allowed further procrastination then an issue of credibility could be created. He added that additional revisions to the Code could be made as the commission proceeded with its duties.

Mr. Farach stated that although it was imperative to enact the Code, the commission was a non-elected, non-political body that should not inject itself into the political process, which could tarnish the COE's integrity.

Mr. Johnson said that he wanted to advocate for a process by which a drafting committee was used to vet amendments to the Code.

Dr. Fiore stated that although she had no objections to Mr. Johnson's proposal about the drafting committee, she did not believe it was the COE's role to instruct the BCC in that regard.

XI- CONTINUED

Mr. Farach said the COE's lack of last minute lobbying stemmed from its intent to interpret the ordinance as drafted.

XII. EXECUTIVE DIRECTOR COMMENTS

XII.a.

Mr. Johnson said that once the amended Code was ratified, 20,000 pocket-sized ordinance guides would be printed and released to every County employee and official.

IV. APPROVAL OF MINUTES FROM APRIL 7, 2011 – CONTINUED

(CLERK'S NOTE: See pages 1-4 for earlier discussion on item IV.)

Administrative Assistant Gina Levesque stated that on page 16 of the April 7, 2011, minutes, the motion carried 3-1 with Ronald Harbison opposed, Edward Rodgers abstained, and Mr. Reinhart voted in favor.

Mr. Johnson stated that the minutes were officially clarified.

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

At 5:15 p.m., the chair declared the meeting adjourned.

APPROVED:

A handwritten signature in blue ink that reads "Edward Rodgers". The signature is written in a cursive style and is positioned above a horizontal line.

Chair/Vice Chair