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

JULY 12, 2012

THURSDAY **COMMISSION CHAMBERS**
1:40 P.M. **GOVERNMENTAL CENTER**

I. CALL TO ORDER

(CLERK'S NOTE The Commission on Ethics (COE) presented an award to Judge Edward Rodgers.)

Commissioner Manuel Farach, chair, said that Judge Rodgers was appointed as the initial COE chair and that he had served with distinction for its first two years. He concluded that Judge Rodgers had moved on to pursue other ventures.

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA

STAFF:

Mark E. Bannon, COE Senior Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Paula Wilson, Deputy Clerk, Clerk & Comptroller's Office (Recording and Condensing)
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office (Condensing)

III. INTRODUCTORY REMARKS

Commission on Ethics Executive Director, Alan Johnson, Esq., stated that a quorum existed.

Commissioner Farach stated that anyone wishing to speak should submit a public comment card, and that cell phones should be silenced.

IV. APPROVAL OF MINUTES FROM JUNE 7, 2012

Commissioner Farach stated that on page 19 of the June 7, 2012, minutes he believed that he had said, Mr. Farach commented that although it could not be rewritten by the COE. He added that on page 23, the motion to approve should read RQO 12-034 instead of RQO 12-044.

MOTION to approve the June 7, 2012, minutes as amended. Motion by Commissioner Robin Fiore, seconded by Ronald Harbison, and carried 4-0.

V. MOTION HEARINGS (C11-027) (Public Hearing)

Mr. Johnson stated that since a probable cause finding existed, it would be best to hear the motion to dismiss the probable cause finding first, although an amendment existed that may affect whether the case continued.

Commissioner Daniel Galo said that he would abstain from this case since his firm had previously represented the respondent. He added that he had filed Form 8B, Memorandum of Voting Conflict.

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

Mr. Johnson clarified that a quorum still existed.

(CLERK'S NOTE: Item V.b. was taken at this time.)

V.b. Motion to Dismiss and Incorporated Memorandum of Law in Support Thereof

Mr. Johnson read the COE's Rules of Procedure regarding a motion to dismiss. He said that staff had recommended that the respondent and the advocate present oral arguments supporting their positions regarding submissions and attachments that were provided in discovery or by motion.

V.b. – CONTINUED

Commissioner Farach stated that the issue should be discussed by the COE, and that oral argument would be considered with the paperwork.

Mr. Johnson read the COE's ordinance, section 2-260.3:

> 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 that the Commission on Ethics dismisses a complaint as provided in the subsection, the Commission on Ethics shall issue a public report stating, with particularity, its reasons for the dismissal.

He added that the remaining section dealt with referring out to other agencies regarding a dismissal.

Commissioner Farach stated that the standard for the probable cause finding could be reiterated.

Mr. Johnson said that the COE's original standard for determining probable cause was as follows:

> Probable cause exists where there are reasonably trustworthy facts and circumstances for the COE to conclude that the respondent, in this case, Dr. Scott Swerdlin, violated the Palm Beach County Code of Ethics.

He added that if reached, this would be germane to the motion to amend and that the COE had full and total discretion under the ordinance's conditions regarding a motion to dismiss.

Commissioner Farach said that all issues would be approached from a civil perspective since the proceedings were civil in nature.

The Respondent's representative, Brian Seymour, Esq. stated that:

- The distinction was not between criminal and civil, but with the penal statute.

V.b. – CONTINUED

- The probable cause findings could not be taken as true due to misinterpretation of facts and the existence of additional evidence, which provided a basis for dismissal under the rule.

- Dr. Swerdlin was an equine veterinarian in the Village of Wellington (Wellington), and was the chair of Wellington's Equestrian Preserve Committee (EPC). In that capacity, Dr. Swerdlin had presided over part of a December 2011 hearing. The hearing included multiple applications that may have been filed by separate people or companies, which provided various issues before the EPC. The four applications included:

    - a village-wide amendment to Wellington's comprehensive plan;

    - a village-wide amendment to Wellington's zoning code;

    - a specific plan unit development modification; and,

    - a specific conditional-use request.

- The complaint, the investigation report, and the motion had misconstrued some issues so that a portion of the meeting, which was unclear from the minutes, was transcribed.

Mr. Seymour requested that the transcript excerpt from the December 14, 2011, meeting be included with his materials as part of the record.

Megan Rogers, COE staff counsel, stated that if a separate transcript was not included in the initial discovery, it was not included in the materials for submittal to the COE.

Mr. Seymour clarified that the items he provided as part of the agenda packet were relative to the motion to dismiss, and that one of the four applications, a cover letter, a transcription, and an application withdrawal letter were included. He added that:

- The entities involved were the Equestrian Sport Productions (ESP), Wellington Equestrian Partners (WEP), and Mark Bellissimo.

V.b. – CONTINUED

- Under Florida Law, ESP and WEP were two separately organized corporations with Mr. Bellissimo's involvement in both companies. According to the County's Code, these entities could not be treated as the same.

- The Fourth District Court of Appeal in *State vs. Beyer* (phonetic), provided, the COE direction in applying the law to the facts.

- The COE must follow the County Code's standard rule of construction.

- In *City of Miami Beach vs. Galbut*, any doubt must be resolved in favor of strict construction so that those covered by the statute had clear notice of which conduct it prescribed.

- Dr. Swerdlin would not have known that Mr. Bellissimo's involvement with ESP, Dr. Swerdlin's customer or client, would require recusal.

- The definition of customer or client did not reference related entities, under common management, parent, or subsidiaries. Dr. Swerdlin was unclear on these issues since they were not discussed, and he was improperly advised by the EPC's lawyer.

- According to the County Code's plain language, Dr. Swerdlin's customer or client was ESP, and ESP did not receive a special financial benefit.

- Confusion existed about the applicant since Dr. Swerdlin and the other EPC members did not see the form which said, Michael Stone, Equestrian Sport Productions. This was the only instance where ESP was mentioned.

- The letter that was submitted with the application form did not mention ESP. It said that on behalf of WEP, the applications were submitted for Wellington's consideration.

- Wellington's staff reports provided to the EPC identified only WEP as the applicant.

- When Mr. Bellissimo spoke as the applicant's representative, he said that WEP was the beneficial interest in the proposed project.

V.b. – CONTINUED

- Dr. Swerdlin performed veterinary work for horse shows operated by ESP.
- At the public hearing, Michael Stone, ESP president, had read a letter stating that the horse shows would continue, and that ESP was not affected.
- Dr. Swerdlin knew that WEP was the applicant and beneficiary of this application; however, his customer or client, ESP, was not mentioned, except to say that it would hold shows as usual.
- Wellington counsel and EPC advisor, Jeffrey Kurtz, was confused about the issue.
- At the December 14, 2011, meeting, Mr. Kurtz stated that any individuals with a conflict should recuse themselves; however, Dr. Swerdlin knew that he had no conflict since WEP was not his customer or client.
- During the hearing, Mr. Kurtz should have addressed and clarified any impact that the County's code would have on the discussion.
- The recusal issue came up after public discussion and before discussion among the EPC members.
- In reviewing the minutes, it was clear that Dr. Swerdlin was confused and concerned when Mr. Kurtz read that, an individual having any business relationship with the entities needed to recuse themselves, since it appeared that in that case all the EPC members should recuse themselves and the EPC would lose a quorum.
- Mr. Kurtz was incorrect since the recusal issue was unrelated to business relationships, and only related to whether the customer or client had a special financial benefit.
- Dr. Swerdlin should not have had to recuse himself because ESP did not appear before the EPC.

V.b. – CONTINUED

- The advocate's evidence that was included in the motion, and evidence that showed that the horse shows would continue, did not prove that ESP received a special financial benefit.

- Regardless of the applications, ESP had already been given the license and the show's production dates.

- The hearing's issue related to a new horse arena and hotels that would have been beneficial to WEP if it owned or developed the property. It did not change ESP's ability to host its events.

- By County Code definition, Dr. Swerdlin knew that no impact to him, his client, his employer, or any individual that he had a clear relationship with existed; however, he recused himself.

- Under the County's Code, the COE had the ability to direct individuals by issuing a letter of instruction.

- The violations, if any, were inadvertent, insubstantial, or unintentional, and the motion should be dismissed under rule 3.7(b), or alternatively, a letter of instruction should be issued pursuant to rule 3.7.

Ms. Rogers stated that:

- The staff report that was submitted to the EPC had indicated that WEP was the applicant; however, page one of the application had indicated that ESP was the actual applicant.

- Dr. Swerdlin had notice that ESP was heavily involved in this project, that he would receive a special financial benefit by participating in the December 14, 2011, vote and that he reasonably should have known that a conflict existed.

- No significant difference existed in terms of notice between WEP and ESP; however, staff agreed that they were separate and uniquely individual entities for legal liability purposes.

- Evidence showed that Dr. Swerdlin had actual knowledge that ESP was the applicant.

V.b. – CONTINUED

- If this matter proceeded to final hearing, Mr. Kurtz would testify that he notified Dr. Swerdlin in advance that ESP was the applicant and that a conflict existed.

- The ESP stood to gain a special financial benefit from the zoning changes presented to the EPC in December 2011.

- Although ESP hosted dressage events on the property, they sought to host events at the $80 million complex proposed by WEP. The new complex would provide ESP with more facilities, horses, and funds.

- Dr. Swerdlin had three outside businesses:

  - Palm Beach Equine Clinic;

  - Palm Beach Equine Medical Center; and,

  - Palm Beach Equine Sports Complex.

- As the wholly owned subsidiary of WEP, ESP owned and operated Wellington's Winter Equestrian Festival (WEF).

- Dr. Swerdlin's outside business provided veterinarian services to the WEF and to any events that would be held at ESP's new facility.

- Dr. Swerdlin received over $10,000 worth of benefits in advertising.

Dr. Swerdlin had made the following statement at the December 2011 meeting:

> If we have an issue here – and I'll be frank with you – we are the veterinarians. We don't charge. We have a nice table. We get promoted. We are the veterinarians for the Winter Equestrian Festival.

- Dr. Swerdlin was familiar with the type of work that ESP performed.

- The zoning application listed the applicant as Michael Stone, ESP.

- WEP created ESP to host Wellington dressage and horse-jumping events.

V.b. – CONTINUED

- As a parent corporation, WEP also benefitted when ESP was successful.

- Staff alleged that based on working at the WEF as the official veterinarian of WEP and ESP, Dr. Swerdlin had constructive knowledge that these facilities were going to be changed in order to benefit the new dressage complex.

- Mr. Stone stated that Mr. Bellissimo, managing member, of both WEP and ESP, presented the project to the EPC.

- Mr. Bellissimo sent a letter to Wellington's Planning and Zoning Director, months after the meeting, withdrawing his request for these changes on behalf of ESP and WEP.

- A hotel complex, more barns, development, and access points would affect the types and scale of events ESP could hold.

- Dr. Swerdlin acknowledged that he received a conflict of interest form in E mails between him and Wellington Deputy Clerk Rachel Callovi.

- Dr. Swerdlin should have known that ESP would receive a financial benefit from changes granted to ESP or WEP since top management referred to both companies interchangeably.

- Mr. Seymour argued that Dr. Swerdlin's participation and subsequent abstention should be forgiven as inadvertent and unintentional; however, Dr. Swerdlin had still failed to file the State voting conflict form.

- Changes that were sought by Mr. Bellissimo and his companies at the December 14, 2011, meeting included additional access points to the property, unlimited use of the facility, and additional permanent structures on the property.

- Under Wellington's zoning code, staff had previously allowed special events; however, equestrian special-use permits must go before the EPC. Uncertainty was created by doing business under a permitted process instead of a complete zoning change.

V.b. – CONTINUED

- The applications that were presented to the EPC on December 14, 2011, sought an overall use change to benefit ESP.

- Staff recommended that the COE proceed to final hearing on this matter.

Mr. Seymour responded that:

- Dr. Swerdlin did not have the first page of the applications at the meeting, and a subsequently filed letter said that were merged together and treated as the same.

- The letter did not say Equestrian Sport Productions, but instead, Equestrian Sport Partners.

- Ms. Rogers referenced seven months of evidence that Dr. Swerdlin did not have and did not know about.

- It was presumed that Dr. Swerdlin knew the intricacies of horse show management.

- Mr. Bellissimo made the differentiation between WEP and ESP at the hearing.

- Mr. Kurtz should have clarified at the December 14, 2011, hearing that he believed ESP was the applicant.

- Wellington's comprehensive plan information that was submitted November 9, 2011, and not provided to Dr. Swerdlin, mentioned that it was submitted by WEP.

- During seven months of investigation Dr. Swerdlin was unaware that many documents existed.

- Dr. Swerdlin was advised not to file Form 8B since he did not believe the Code was violated.

Commissioner Farach stated that he wished to adopt a standard of review for the motion to dismiss that did not require discussing the final evidentiary facts, and that he would allow questioning of counsel by the COE members.

V.b. – CONTINUED

Commissioner Harbison expressed his concern that the COE may create loopholes in its attempt to enforce an ethics code, if a matter was approached using the standard of a form over substance.

Responding to questions, Mr. Seymour said that:

- The BCC held discussions on how a customer or client was defined, and this was not a question of form over substance in this instance.
- The key factor was that Dr. Swerdlin was not on notice.
- Conflict checks were not performed since the rules regulating the Florida Bar identified entities separately. In this instance, the benefit was to the parent company, not to the subsidiary.

Ms. Rogers said that:

- The conflict rested with ESP, Dr. Swerdlin's claimed client, where he had been providing services.
- While WEP was the parent company, ESP received a benefit from this change since it would expand what ESP could do.
- If the change was approved, ESP could host as many events as it desired during the year.

(CLERK'S NOTE: Commissioner Farach allowed comment by Pro Bono Advocate Joseph Small, Esq.)

Mr. Small stated that Dr. Swerdlin had attempted to circumvent the vote by making it a recommendation. He added that Mr. Kurtz had noted that voting and discussing the matter was against the Code if a conflict existed.

Mr. Seymour replied that:

- Dr. Swerdlin did not participate in any discussion and had recused himself just before the vote.
- Dr. Swerdlin was confused when Mr. Kurtz read since it was not in line with the plain language of the Code.

V.b. – CONTINUED

- What Dr. Swerdlin did and did not do should be delineated in a specific timeframe to avoid misrepresentation.

Responding to questions, Mr. Johnson said that:

Staff had attached materials that pertained to the motions filed except some irrelevant discovery material filed by the advocate.

Dr. Swerdlin had completed an acknowledgement of the required ethics training for advisory board members.

Commissioner Fiore stated that:

- The COE was previously informed that Mr. Kurtz and Dr. Swerdlin had some interaction in which the conflict of interest question was addressed.

- It was clear that Dr. Swerdlin disagreed with Mr. Kurtz' understanding and that Craig Galle, Esq., attempted to mediate that disagreement before the meeting. Disagreement regarding Code provision requirements continued at the meeting.

- She agreed that Dr. Swerdlin had not conceded that a conflict of interest existed, he did not sign Form 8B, and he did not acknowledge any of the discussions with Mr. Kurtz as being dispositive.

- The issue was that Dr. Swerdlin disagreed with Mr. Kurtz' understanding of the conflict of interest with the Code provision requirements.

- It seemed that his priority was preserving the quorum, and that he was most concerned with ensuring that a recommendation was made.

Mr. Seymour said that:

- The confusion and the disagreement were not fundamentally different and that Dr. Swerdlin's issue with the quorum was that the EPC would be unable to take action on matters.

- Dr. Swerdlin was unaware of the Code provisions, since EPC members received staff reports just before the meeting.

V.b. – CONTINUED

- The ESP had no interest in the property since they managed shows.

Commissioner Fiore asked whether Mr. Seymour stated that it was just that the applicant was not ESP; the fact that the application benefited Dr. Swerdlin's customer or client did not matter; or that only the actual applicant mattered.

Mr. Seymour said that no evidence existed that the development's application would benefit his customer or client, and that horse shows had been occurring under the existing circumstance for many years.

Mr. Johnson said that the respondent and the advocate had agreed that the COE should read from pages 1-170 of the discovery materials that were previously provided at the probable cause hearing.

Commissioner Fiore clarified that she had read a memo from Mr. Basehart dated December 8, 2011, which started on page 98. She requested that at some point, staff compile what they believed was the complete agenda package before the advisory committee. However, it was not needed at this time.

Commissioner Farach stated that:

- It was clear that the ordinance's intent was not penal in nature and that he did not believe that the COE could take actions possibly considered penal.

- The COE could levy fines up to $500.

- Mr. Johnson had previously stated that COE proceedings were similar to those of code enforcement.

- Although at least one level or layer of corporate entity-disconnect existed, it was apparent that the evidence presented showed that Mr. Bellissimo was the ultimate owner of all the entities.

- In applying the standard of reasonably trustworthy facts and circumstances that the respondent violated the Code, the evidence did not need to be proved beyond a reasonable doubt at this point.

- Based on those items, he was prepared to vote in favor of denial of the motion to dismiss and he did not think that issuing a letter of instruction was appropriate under these particular circumstances.

V.b. – CONTINUED

- If the COE voted to go forward to final hearing, more direct evidence of a violation as well as any mitigating circumstances would be expected.

MOTION to deny the motion to dismiss. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 3-0. Daniel Galo abstained.

RECESS

At 3:37 p.m., the chair declared a recess.

RECONVENE

At 3:54 p.m., the meeting reconvened with Commissioners Farach, Fiore, and Harbison present.

V.a. Motion to Amend Public Order Finding Probable Cause

1. Supplemental Memorandum of Investigation

2. Amended Memorandum of Probable Cause

3. Memorandum in Opposition to Motion to Amend Public Order Finding Probable Cause

Mr. Johnson noted that the respondent and advocate were permitted to make a brief oral statement to the COE; however, it was a paper hearing based on the memorandum of probable cause, staff reports and attachments, and the respondent's written response. He reiterated that the established COE standard for determining probable cause was as follows:

> Probable cause exists where there are reasonably trustworthy facts and circumstances for the COE to conclude that the respondent, Dr. Scott Swerdlin, violated the Palm Beach County Code of Ethics. The COE must determine whether the standard has been met, in addition, akin to civil standards, on a motion for leave to amend.

Mr. Johnson said that he recommended that the COE adopt the general civil rule that an amendment should be granted unless, the privilege had been abused, amending would be futile, or if doing so would prejudice the other party.

Mr. Seymour requested that this item be closed to the public.

V.a. – CONTINUED

Mr. Johnson said that a quandary for closing this matter existed. He stated that all documents and attachments were already public record. He said that section 2-260(g) required that all records be exempt until a finding of probable cause existed since this was not a separate complaint, but instead, an amendment. He concluded that probable cause for this particular case was already found and that all proceedings thereafter were to be public.

Ms. Rogers explained that once a probable cause determination was found in a complaint, all records subsequent to that determination were available to the public. She said that no additional penalty for the issues staff sought to amend existed and that they wished to add WEP and Dr. Swerdlin's outside businesses to the matter. Staff did not believe prejudice existed and that it was appropriate for this to remain public at this time based on the rules of procedure as well as the COE code, she concluded.

Mr. Seymour stated that he wished to withdraw his request based on staff's comments.

Ms. Rogers stated that:

- After ongoing investigation, staff sought leave to amend the prior probable cause determination to include Dr. Swerdlin's outside businesses, Palm Beach Equine Clinic, Palm Beach Equine Medical Center, and Palm Beach Equine Sports Complex under misuse of office and voting conflict sections that Dr. Swerdlin used his official position to give a direct special financial benefit to those entities.

- Staff also wished to amend the probable cause determination to include WEP as a customer or client of Dr. Swerdlin.

- Staff's position was that WEP and ESP were the same with regard to Dr. Swerdlin's conflict.

- The Code prohibited advisory board members from using their office, participating, or voting on a matter that would give a special financial benefit to their customer or client.

V.a. – CONTINUED

- While ESP and WEP were legally separate entities, ESP was founded for the direct benefit of WEP, and both companies were used interchangeably by their own officers and directors and by members of the public and zoning staff.

- Furthermore, as the parent company of ESP, WEP benefited from any business growth at these dressage competitions.

- Dr. Swerdlin alleged that he received no financial benefit from serving as the official veterinarian at the Winter Equestrian Festival, the old facility, or the new dressage program.

- The COE, in its request for advisory opinion 10-013, determined that the term special financial benefit included both a financial gain and loss, similar to the State of Florida Code of Ethics.

- Dr. Swerdlin was operating a thriving business and the new dressage facility would bring more horses, more business, and more money to ESP, WEP, and Dr. Swerdlin's outside businesses.

- Dr. Swerdlin's clinic was listed as the official provider of veterinary services in a national application for the dressage events that were held in the spring at the new facility.

- It was clearly indicated that Palm Beach Equine Medical Center was the nearest surgery center and Dr. Swerdlin's clinic was listed along with recommended amenities.

- Dr. Swerdlin was in a position to benefit from the development of the $80 million equestrian complex.

- The Palm Beach Equine Medical Center came up in every application that went out for these events between January 2012 and April 2012.

- Dr. Swerdlin also operated a sports complex.

V.a. – CONTINUED

- An excerpt pulled from the Palm Beach Equine Sports Complex Web site read that:

  > Palm Beach Equine Sports Complex was the premiere sports destination in Wellington, Florida located at 13070 Pierson Road just east of South Shore Boulevard.

- These were disputed facts; however, credible information existed that the development of this complex would have brought more horses, clients, and money to Dr. Swerdlin and to his outside businesses.

Mr. Seymour responded that:

- WEP was not a customer or client of Dr. Swerdlin and that should be distinguished.

- Staff did not have evidence to show that any money was to be made by Dr. Swerdlin or his outside entity.

- Dr. Swerdlin received advertising for being at horse shows; however, those shows had occurred for years and his location did not change.

- It was inappropriate to expand this without sufficient evidence.

- With respect to the advisory opinion, no evidence of a financial gain or loss existed.

- The COE should deny the motion and move forward on the existing findings of probable cause.

Commissioner Fiore said that she assumed that the amendment was without prejudice and that it did not mean staff was correcting an error and Commissioner Farach asked for clarification on the amendment.

V.a. – CONTINUED

Ms. Rogers said that:

- The complainant initially alleged that ESP was Dr. Swerdlin's customer or client and it would receive a special financial benefit.

- When staff continued to review the materials from the initial and supplemental investigations, it became clearer that the new venue would supply Dr. Swerdlin with new means for running his business.

- In the proposed tax amendments to the Wellington comprehensive plan, there existed a large distinction of hotel room nights attributed to dressage events during the WEF.

- In the end, the project failed; however, it did not mean that at the time the meeting was held, Dr. Swerdlin did not use his official position to garner a special financial benefit for his businesses.

Mr. Seymour replied that the project failure did not affect the ability to hold shows and that the economic impact only referred to hotel rooms; and had nothing to do with Dr. Swerdlin or his businesses.

Commission Harbison said that the probable cause nature of this matter required the COE to determine whether the evidence supported reasons to go forward with more inquiries.

Commissioner Fiore stated that:

- Dr. Swerdlin was an exemplary professional, ran a successful business, and cared about the sport and animals.

- The question regarding the way in which decisions were made at the government level was being discussed; advisory bodies had to be very transparent with the public.

- The COE dealt with determining whether habits of activity and interactions needed to change because of the Code and new community standards.

- She agreed that one could not separate Dr. Swerdlin from his business, so she understood that the motion should be amended to include his businesses.

V.a. – CONTINUED

- She also agreed with the issue of including WEP.

- It was important not to be confused by these various intersecting business relationships; however, they should all be revealed so that when a decision was made the COE did not fail to see the entire picture.

Commissioner Farach said that he was prepared to allow the amendment; however, at the final hearing, the advocate would be held at a much higher standard to prove these arguments.

MOTION to allow the amendment to the probable cause finding. Motion by Commissioner Ronald Harbison, seconded by Commissioner Robin Fiore, and carried 3-0. Commissioner Daniel Galo abstained.

Mr. Johnson said that staff had a proposed public order on the amendment to the probable cause affidavit which had been provided to the respondent; and unless there was an objection, they would ask the COE's adoption.

Mr. Seymour stated that he could not agree to the ruling contained in the order.

Commissioner Farach stated that typically the COE reviewed the order, sometimes made changes, and permitted counsel to review the form.

(CLERK'S NOTE: During the discussion on item V.a., Mr. Johnson recommended that item VII be continued to next month due to notice issues. For further discussion on item V.a., see page 20.)

VII. PROBABLE CAUSE HEARING (C12-003) (Executive Session)

MOTION to continue item VII until the next meeting of the Commission on Ethics to allow for proper notice. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Commissioner Daniel Galo absent.

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

V.a. – CONTINUED

Mr. Seymour said that since everyone was discussing the form of the order, he asked whether Dr. Swerdlin could leave, and Commissioner Farach agreed.

Discussion ensued regarding the available dates for the final hearing on this issue. The final COE consensus was that October 1, 2012, October 3, 2012, and October 4, 2012, would be available to hold the final hearing.

MOTION to accept the amended public report and finding of probable cause C11-027. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Commissioner Daniel Galo abstained.

Commissioner Fiore read the amended public report and finding of probable cause C11-027 as follows:

> Complainant, Carole Coleman, filed the above-referenced complaint on December 21, 2011, alleging a possible ethics violation involving respondent Dr. Scott Swerdlin, Chairman of the Wellington Equestrian Preserve Committee (EPC).
>
> The complaint originally alleged three Code of Ethics violations involving a meeting of the EPC on December 14, 2011.
>
> Count 1 alleged that respondent misused his official position by participating in a matter before the EPC that would result in a special financial benefit to his customer or client, Equestrian Sports Production and/or Mark Bellissimo, applicant for the Equestrian Village Project, before the EPC for an advisory vote prior to consideration by the Village of Wellington Planning, Zoning and Adjustment Board and ultimately by the Village Council.
>
> Count 2 alleged that respondent corruptly attempted to secure a special privilege, benefit, or exemption for himself and/or his customer or client, Equestrian Sports Production and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties.

V.a. – CONTINUED

Count 3 alleged that respondent, after having been admonished by the Village of Wellington Attorney that a conflict of interest under the Code of Ethics requires abstention from both voting and participating in the matter before the EPC, did significantly participate prior to ultimately abstaining from voting in the matter. In addition, after abstaining, respondent allegedly failed to file a state conflict of interest Form 8B as required under the Code of Ethics.

On January 30, 2012, the complaint was determined by staff to be legally sufficient. The matter had been brought to the attention of Commission on Ethics staff by a formal complaint and pursuant to COE Rule of Procedure 4.1.3., a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a finding of legal sufficiency a memorandum of legal sufficiency was filed and a preliminary investigation 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 Commission on March 1, 2012, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the Commission conducted a probable cause hearing in executive session. The Commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the respondent as well as oral statements of the respondent and advocate. At the conclusion of the hearing the Commission on Ethics determined that there were reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated §2-443(a)(COUNT 1), §2-443(b)(COUNT 2) and §2-443(c)(COUNT 3) of the Palm Beach County Code of Ethics and a final hearing was set in order to determine whether a violation or violations occurred.

Subsequently, pursuant to §2-260(d) and Commission on Ethics Rule of Procedure 4.12, Commission Staff obtained additional investigative material regarding the respondent, his equine clinic and medical facilities and equine sports complex businesses and the relationship between Wellington Equestrian Partners (WEP) Equestrian Sports Productions (ESP) and Mark Bellissimo and filed a motion to amend the Public Order Finding Probable Cause to include a finding that respondent may have violated §2-443(1) and §2-443(4) of the Code of Ethics as follows:

V.a. – CONTINUED

Count 1 now alleges that respondent misused his official position as Chairman of the Equestrian Preserve Committee (EPC), a Village of Wellington advisory board, by participating in a matter before the EPC that would result in a special financial benefit to himself, his outside businesses, including Palm Beach Equine Clinic, Palm Beach Equine Medical Centers and Palm Beach Equine Sports Complex, or his customers or clients, Equestrian Sports Production, Wellington Equestrian Partners and/or Mark Bellissimo, by participating in items before the EPC regarding a proposed Equestrian Village Project.

Count 2 now alleges that respondent corruptly attempted to secure a special privilege, benefit, or exemption for himself, his outside businesses, including Palm Beach Equine Clinic, Palm Beach Equine Medical Centers and Palm Beach Equine Sports Complex, and/or his customers or clients, Equestrian Sports Production, Wellington Equestrian Partners and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties.

Count 3 alleges that respondent, after having been admonished by the Village of Wellington Attorney that a conflict of interest under the Code of Ethics requires abstention from both voting and participating in the matter before the EPC, did significantly participate prior to ultimately abstaining from voting in the matter. In addition, after abstaining, Respondent allegedly failed to file a state conflict of interest Form 8B as required under the Code of Ethics.

Pursuant to Article VIII, Section 2-443(a), *Misuse of public office of employment* prohibits a public official or employee from using their official position to take any action, or to influence others 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 by members of the general public, for any person or entity listed in §2-443(a)(1-7), including him or herself, an outside business or employer or a customer or client of their outside business or employer.

V.a. – CONTINUED

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

Pursuant to Article XIII, §2-443(c), an official shall abstain from voting and not participate in any matter that will result in a special financial benefit for him or herself, an outside business or employer or customer or client of his or his outside business or employer. A customer or client is an entity to which the official's outside business or employer has provided goods or services in excess of $10,000 in the aggregate during the 24 months preceding the official action taken. The official must not only publicly disclose the nature of the conflict when abstaining, but must also file a conflict of interest Form 8B pursuant to the requirements of §112.3143, Florida Statutes, and submit a copy to the Commission on Ethics.

Information obtained during the inquiry, investigative and supplemental investigative reports along with a Commission on Ethics staff Motion to Amend the Public Order Finding Probable Cause was presented to the Commission on Ethics on July 12, 2012, with a recommendation that an Amended Public Order Finding Probable Cause be issued. At that time, the Commission conducted a probable cause hearing in public session. The Commission reviewed and considered the investigative reports, documentary submissions, recommendation of staff, written responses of the respondent as well as oral statements of the respondent and advocate. At the conclusion of the hearing the Commission on Ethics determined that there were reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated §2-443(a)(1),(4) and (5)(Count 1 as amended), §2-443(b)(Count 2 as amended) and §2-443(c)(Count 3) of the Palm Beach County Code of Ethics and a final hearing was set in order to determine whether a violation or violations occurred.

V.a. – CONTINUED

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

Therefore it is:

Ordered and adjudged that the Motion to Amend the Public Order Finding Probable Cause is hereby granted and the complaint against respondent, Dr. Scott Swerdlin, is hereby set for final hearing beginning on October 1, 2012.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 12, 2012, for the Palm Beach County Commission on Ethics, Manuel Farach, chair.

V.b. Pages 2-14

VI. PROBABLE CAUSE HEARING (C12-005) (Public Hearing)

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

Mr. Johnson noted that the respondent waived, in writing, confidentiality and allowed all the documents in the hearing to be public.

Mark E. Bannon, COE Senior Investigator, reported that:

- The respondent in this case was Nelson "Woodie" McDuffie, Mayor of the City of Delray Beach (Delray), and that staff recommended this complaint be dismissed for legal insufficiency.

- The matter came to the attention of COE staff through a sworn complaint submitted by Richard Van Gemert of Delray.

- The complaint was based on actions that occurred at two regular meetings of the Delray commission held on March 12, (2012,) and April 3, (2012.)

VI. – CONTINUED

- During these meetings, a land use project known as Delray Place was presented to the commission for approval, which included a request to change the City's future land-use map for the location of this project from transitional to general commercial and to change the parcel's zoning from planned office center to planned commercial.

- Several people in attendance at both of those meetings opposed these changes, including the complainant.

- The complainant alleged that the Delray zoning commission had recommended against these changes to the Delray commission and the matter was initially discussed at a March 20, (2012,) hearing, which was held over until the April 3, (2012,) hearing.

- The complaint stated that after the close of the public comment portion of the hearing on April 3, (2012,) Mayor McDuffie failed to call for a vote on the matter, and instead, engaged in discussions with other Delray commissioners, staff, and the agent for the applicant about the possibility of withdrawing the application or amending it to request a zoning change to a new category known as Special Activities District, which all agreed would allow for the same development without a large zoning change.

- The attorney stated that if that was done, the applicant should pay the cost of re-notification since a second hearing would be required.

- The applicant's agent agreed to this option and asked that the application be put on hold until it could be amended. According to the minutes, he had current tenants in those buildings, and did not want them to think he had abandoned the idea of changing to build this new commercial development.

- Several people who wished to comment were told by Mayor McDuffie that the public comment portion was over.

- The commission then voted to allow the applicant to withdraw his application and to amend and resubmit it in six months.

VI. – CONTINUED

- The complainant stated that this was a violation of both State law and the local rules of procedure; however, no indication existed that Mayor McDuffie acted for either his own financial benefit or for any corrupt motive.

- Mayor McDuffie was quoted in the minutes as saying that he wanted this project because he thought it was best for the tax base in Delray Beach.

- Aware that Mayor McDuffie was running for the Palm Beach County Supervisor of Elections position, staff also performed check of the funds in his elections account and could not find any deposits or any funds taken from any individual associated with the project or with the agent of the project.

- A check was also performed on the corporate Web site for the Florida Division of Corporations. It was found that nobody associated with either the applicant or agent's companies had any association with Mayor McDuffie.

- Since no financial benefit to Mayor McDuffie or any related entity existed, the misuse section could not be used. Even if Mayor McDuffie should have voted, it was not a violation of the Code, and since his statement was mainly based on the statement that he withheld the vote because he believed that project was good for Delray Beach, it didn't meet the criteria of a corrupt misuse.

- Staff asked for the COE to dismiss the request as legally insufficient.

Commissioner Galo asked whether a process that the mayor employed was in violation of any State law or local rule of procedure.

Mr. Gannon said he did not know or check the local rules since they could not be enforced. He added that he believed it probably was not in violation of State law since it was the right of the commission to have those discussions. He said that thought the problem dealt with Mayor McDuffie closing public comment and it had initiated the complaint, he concluded.

MOTION to accept staff's recommendation of a finding of no legal sufficiency with regard to C12-005. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

VI. – CONTINUED

Mr. Johnson stated that he recommended that the COE return to the reading of the public report and final order of dismissal.

(CLERK'S NOTE: Item VIII was taken.)

VII. Page 19

VIII. RECONSIDERATION OF PRIOR OPINIONS

Mr. Johnson clarified that item VIII was a resubmission and not a reconsideration of prior opinions by staff. He added that reconsideration first required a motion by COE members who voted in favor of the original opinions.

MOTION to reconsider Request for Advisory Opinion (RQO) 12-034 and RQO 12-036. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0.

VIII.a. RQO 12-034

Ms. Rogers stated that:

- A public employee asked whether she could accept hotel rewards points while traveling in her official capacity and where her public employer had reimbursed her travel costs.
- The COE had initially held that commercial rewards points for official business where the costs were reimbursed by a public employer could not be personally accepted by the public employee for his or her private benefit.
- The County's Code of Ethics (Code) stated that publicly advertised offers for goods or services available to an employee under the same terms and conditions that were offered or made available to the general public were not considered gifts.
    - Hotel rewards points were offered to the general public.
    - The value and frequency of the points was so insignificant and sporadic that accounting for the value was unreasonable and impractical.

VIII.a. – CONTINUED

- There was no indication that the State's Code had addressed the issue, but staff's proposed revised standard would be consistent with federal regulations, which oversaw the use of promotional materials and travel rewards programs. Therefore, staff recommended that the rewards points obtained in an official capacity should not be considered as gifts.

- A future discussion may be necessary to address situations where, unbeknownst to a public employer, public employees chose higher-cost travel and hotel reservations to obtain a benefit for themselves.

- Public employers may always impose regulations more stringent than the Code.

- Staff's proposed revised standard would also be consistent with what appeared to be the standard practice in State agencies as well.

Commissioner Farach stated that rewards points gained from the use of public funds belonged to the public even though making reservations in the name of governmental agencies was impractical.

Commissioner Fiore said that when making reservations, public employees could be restricted from using their frequent flyer or hotel numbers.

Commissioner Farach said that the COE should not micromanage, and that the restriction should be left to the discretion of each governmental entity.

Commissioner Harbison commented that some economic exchanges, such as interest costs or temporarily reducing a public employee's credit limit, might offset the reward points benefit.

Commissioner Galo opined that the relationship of a public employee and a governmental employer should not significantly differ from that of a private business. He added that he did not see any abuse being conducted by the public employee.

MOTION to approve the revised advisory opinion letter RQO 12-034. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0.

(CLERK'S NOTE: Item VI. was continued at this time.)

VI. – CONTINUED

Commissioner Fiore read the public report and final order of dismissal for C12-005:

Complainant, Richard Van Gemert, filed the above-referenced Complaint on June 8, 2012, alleging a possible ethics violation involving Respondent, Nelson McDuffie, Mayor of City of Delray Beach.

The Complaint alleges Respondent failed to call for a vote at the close of public comments concerning a private party application for change in land-use designation and zoning for a tract of land within the city. The Complaint further alleges that the application was withdrawn, and the matter was tabled in order for the applicant to resubmit the application under a different zoning request in violation of the rules of procedure for a quasi-judicial hearing.

On June 21, 2012, after reviewing the Complaint, supporting affidavit, and memorandum of inquiry, the Complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on July 12, 2012, with a recommendation of dismissal as legally insufficient.

The Commission on Ethics reviewed the Complaint and memorandum of inquiry and determined that there is no allegation by Complainant or information known or uncovered to indicate that Respondent acted in his official position in violation of the Code of Ethics. Further, there is evidence based on both records obtained during the inquiry and the statements of Respondent and Complainant, that the Respondent received no financial benefit, and that his actions were based upon what he believed to be in the best interests of the city during the meeting.

Therefore, the Commission has determined that the actions taken of the Respondent, Nelson McDuffie, do not constitute a violation of the Code of Ethics and dismissed the Complaint on July 12, 2012, due to no legal sufficiency.

Therefore, it is ordered and adjudged that the Complaint against Respondent, Nelson "Woodie" McDuffie, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 12, 2012, by Manuel Farach, Chair.

VI. – CONTINUED

Commissioner Fiore requested that, in the fourth paragraph, a period be placed after the words, financial benefit. She said that she was hesitant to add the remaining sentence's language since the COE did not investigate the facts regarding C12-005.

Commissioner Farach said that the language was probably consistent with the Respondent's belief, but the COE did not make a factual determination that it was in the City's best interest.

Mr. Johnson said that the COE had previously given some leeway to respondents when dismissing complaints due to the stigma.

Senior COE Investigator Mark E. Bannon stated that the Complainant's main issue was that the zoning board and the majority of people that were present at the public meeting were against the land-use change. He added that from what he could establish, there was no financial or corrupt benefit to Mayor McDuffie.

Commissioner Fiore said that since Mayor McDuffie received no financial benefit, the COE could only state that there was no Code violation. She suggested that the fourth paragraph's remaining language in the last sentence be removed.

Discussion ensued, and the COE's consensus was to revise the fourth paragraph's last sentence as follows:

> Further, there is evidence based on both records obtained during the inquiry, and the statements of Respondent and Complainant, that Respondent received no financial or corrupt benefit.

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

VIII.b. RQO 12-036

Ms. Rogers stated that:

- An employee asked whether family members could accompany her on official government travel.

VIII.b. – CONTINUED

- The COE had determined that if a family member accompanied a public employee on an official fact-finding trip, the resulting benefit, which was half the hotel room cost, constituted a misuse of office unless the employee or family member reimbursed the value received within 90 days.

- Staff had recommended that the COE clarify the reimbursable value received by the family member.

- Although staff recognized that there was often little or no additional cost to accommodate a second person per room, any additional costs would remain a special financial benefit.

Commissioner Fiore said that:

- RQO 12-036's revised opinion letter referenced that the employee was not taking a family member, and that the COE did not provide advisory opinions based on hypothetical scenarios.

- The advisory opinion implied that it was appropriate to take along a family member.

- Language should be crafted to state that it was up to management whether a family member could accompany an employee on business.

Mr. Johnson stated that:

- The following previous advisory opinion language could be incorporated:

> While it's not a violation of the Code of Ethics, nevertheless, a government may enact more stringent regulations through its own policies and procedures, and may impose more restrictive requirements then those mandated by the Code.

- Language stating that it was the prerogative of a governmental entity or department whether family accompaniment was permitted could be inserted on page 3, after the sentence that began, Accordingly.

- The proposed revised advisory opinion letter neither supported nor opposed a family member accompanying a public official.

VIII.b. – CONTINUED

Commissioner Fiore suggested the following:

- Delete the following sentence on page 2: A family member is not prohibited from accompanying you on these trips;

- Craft language to state that the Code did not prohibit a family member from accompanying a public official, but the individual employer, municipality, or governmental entity may have rules regarding the family accompaniment; or,

- Craft language to state: The Code of Ethics does not allow or prohibit a family member from accompanying you.

Commissioner Farach suggested language that stated:

> The Code does not speak to the propriety of family members accompanying on trips; such is left to the discretion of the applicable governmental entity.

Mr. Biggs suggested the following language:

> A family member is not prohibited by the Code of Ethics from accompanying you on these trips. However, should you choose to take a family member on a FAM (familiarization) trip with you, if permitted by the governmental entity, please keep in mind that…

MOTION to approve revised advisory opinion letter RQO 12-036 as amended to include the changes as discussed. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

IX. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

IX.a. RQO 12-048

IX.b. RQO 12-049

MOTION to approve the Consent Agenda. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

X. ITEMS PULLED FROM CONSENT AGENDA – None

XI. PROPOSED ADVISORY OPINIONS

XI.a. RQO 12-029

Mr. Johnson said that RQO 12-029 was submitted by Sharon Merchant, whom he believed owned the business, The Merchant Strategy (TMS).

Commissioner Harbison stated that the Merchant family was his client so he would recuse himself from deliberation.

Mr. Johnson said that within 15 days, staff would assist Commissioner Harbison in filing an 8B Conflict of Interest Disclosure Form with the State and the COE.

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

Mr. Johnson stated that:

- Ms. Merchant asked whether, as a Board of County Commissioners appointee to the Convention and Visitor's Bureau (CVB) board of directors, she or her business, TMS, could participate in developing an event where TMS would lobby for and could receive funds from various private entities, funded in whole or in part with public funds, such as the CVB, and various public entities.

- The CVB:

    - was a private, nonprofit entity originally formed in 1983 as Discover Palm Beach County;

    - operated under a County contract to provide tourism marketing services under the County's tourist development plan;

    - received funding from a portion of County collected bed taxes; and,

    - was one of several nonprofit tourism development organizations under the advisory board, Tourist Development Council (TDC). The other organizations under the TDC's umbrella were private entities;

- The TMS was involved in event promotions and full-scale marketing activities. Ms. Merchant was approached by community members to plan and host a Dragon Boat Race Festival.

XI.a. – CONTINUED

- Docket space arrangements and sponsorship sales were made by TMS. The TDC, the Sports Commission, and the Cultural Council offered public funding to companies for similar events, and would likely be involved in the event's initial funding.

- To secure funding, Ms. Merchant or TMS members would solicit public grant money and sponsorship dollars from the organizations.

- As an official, Ms. Merchant could not contract with a governmental entity, such as the County or the TDC. She could, however, in her personal capacity, solicit and contract with the other private entities, such as the CVB, provided she did not use her official position to gain a special financial benefit for her business.

Commissioner Fiore stated that Ms. Merchant, as a CVB board member, could not go before the CVB as a private citizen to solicit or contract.

Mr. Johnson clarified that the Code did not prohibit Ms. Merchant, in her private capacity, from soliciting or contracting with the CVB.

Commissioner Galo read the Code's section 2-443(a) regarding prohibited conduct.

Mr. Johnson said that:

- He had misstated the advisory opinion, and Commissioner Fiore's statement was correct.

- Ms. Merchant could not use her official position before entities such as the Sports Commission, and the Cultural Council, for her own personal financial benefit. In her private or public position, she could not go before the CVB as a CVB board member to solicit, participate, or vote on a matter.

- Officials who were also advisory board members had certain exemptions from the Code's contracting provisions. The Code did not address officials who were not advisory board members.

XI.a.

- Based on the facts and circumstances that were submitted, Ms. Merchant was not prohibited from soliciting event funding from public and private entities other than the TDC, provided she did not use her official CVB position to obtain a special financial benefit for herself, her outside business, or a customer or client of her outside business. She also could not participate in, and vote on, such solicitations before the CVB.

MOTION to approve proposed advisory opinion letter RQO 12-029. Motion by Daniel Galo, seconded by Robin Fiore, and carried 3-0. Ronald Harbison abstained.

(CLERK'S NOTE: Commissioner Harbison rejoined the meeting.)

XI.b. RQO 12-037

Mr. Johnson stated that:

- A County employee asked whether she could benefit from gifts given to her husband, which were unrelated to her County employee status; and if so, whether the gifts' values must be reported pursuant to the Code.

- The County employee's husband was an ordained minister and often received gifts from parishioners. The gifts were based on work that he performed; however, the County employee often received a benefit from the gifts.

- A factual scenario existed that a potential may exist that a donor could be a County vendor.

- In RQO 11-022, the COE had determined that free hotel accommodations and accompanying event tickets given to an airline pilot and his County-employed wife were shared gifts that should be reported if valued over $100. Unlike this advisory request, the vendor issue did not exist in RQO 11-022.

- Staff recommended that the COE:

    - recede from RQO 11-022's determination;

    - adopt the Florida Administrative Code's (FAC) seven State standards in determining what was considered a gift; and,

XI.b. – CONTINUED

- include an eighth standard that based on the facts and circumstances, did a nexus exist between the gift's donor and the public employee.

Commissioner Fiore expressed concern that if the COE based its advisory opinion on the FAC's standards, a huge potential could exist for "pass-through" favors. She added that the eighth factor could not be considered a standard since it was undeterminable whether a nexus existed.

Mr. Johnson commented that:

- The eighth standard was added because if no nexus existed, it was less likely that an issue existed regarding a gift to one person that benefited two.

- The FAC's fourth standard did not apply to RQO 12-037.

Commissioner Galo stated that the COE should define who received the gift and why the gift existed.

League of Cities Executive Director Richard Radcliffe commented that it was usual and customary for pastors to receive gifts from parishioners in lieu of salaries, and without an existing nexus, they could not earn a living.

Mr. Biggs said that the FAC was reviewed at section 34-13.310 since the Code only mentioned indirect gifts at section 2.444(a)(1). He added that using the nexus standard helped to determine the donor's intent.

Commissioner Farach commented that the circumstances and the intent surrounding a particular gift should be considered.

Commissioner Harbison stated that adopting the FAC's seven standards with a nexus standard did not preclude the COE from specifically reviewing a transaction to determine intent.

Commission Farach suggested replacing the language in the last sentence before the eight FAC standards began on page 2 with: The Commission may, among others, consider the following nonexclusive factors in determining whether a gift has been made.

XI.b. – CONTINUED

Commissioner Fiore said that applying the usual and customary standards to this advisory opinion letter may be inappropriate and should not be considered. She suggested:

- replacing the words, additional factors, with the words, important factors, or, significant factors, in the first paragraph on page 3; and,

- adding language to possibly read: No employee or public official should accept an indirect gift or benefit that is intended to influence…

Discussion ensued regarding Commissioner Fiore's proposed language. The COE's consensus was to complete the sentence by adding the verbiage: …the conduct of the employee or the official in the manner in which they perform their public duties.

MOTION to approve proposed advisory opinion letter RQO 12-037 as amended to include the changes as discussed. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0.

XI.c. RQO 12-050

Mr. Johnson stated that:

- After rendering a previous advisory opinion for Pastor Leo Abdella, staff had received further clarification from him regarding a slight variation from the original circumstances.

- Occasionally, Christ Fellowship Church (CFC) dealt with land-use issues where lobbyists would possibly be hired.

- The question arose concerning whether an organization that did not currently retain lobbyists but had in the past and may in the future was considered an employer.

- After reviewing the Code's language, staff recommended that the organization would not be considered as a principal unless a lobbyist was retained.

Commissioner Fiore said that a principal was still considered to be a registered principal if he or she was currently listed as such and had not yet withdrawn.

XI.c. – CONTINUED

Mr. Johnson said that:

- The individual contract determined who paid a lobbyist registration fee.
- Commissioner Fiore's statement should be included in the advisory opinion letter, noting that registration itself merely indicated that someone was the principal of a lobbyist.
    - Registration would not be determinable by the Code, but it would be a factor in a complaint before the COE.
    - If lobbying was completed on a matter and no future lobbying on other matters existed, the COE could require withdrawal of the registration.

Commissioner Fiore requested that the item be tabled so that staff could review the lobbyist retention and withdrawal issue.

Ms. Rogers clarified that the CFC had planned an upcoming retreat for August 9-10, 2012, and that no registered or retained lobbyist currently existed.

Commissioner Farach expressed his concern that the Code's section 2-442 could be read differently.

Commissioner Galo said that section 2-442 did not define whether a lobbyist was someone who was presently employed.

Mr. Johnson suggested removing the word, currently, in the paragraph that began, In sum, and removing the word, current, in the paragraph that began, In summary.

Ms. Rogers said that the CFC employed a lobbyist one or two years ago, but she would get the exact date from Mr. Abdella.

Commissioner Farach suggested rewording the sentence that began, In sum, to read: While CFC has employed lobbyists in the past, such employment was remote in time, and CFC does not have an existing or pending contract with any individual.

XI.c. – CONTINUED

Commissioner Fiore said that the second to last paragraph on page 2 also contained the word, currently. She suggested that page 2, the last sentence in the second to last paragraph could be changed to delete the remaining language after the word, lobbyist.

Commissioner Farach said that the Code did not assist the COE in determining the principal or employer's intent.

Commissioner Fiore said that the word, currently, in the sentence that began, Under the circumstances, should also be deleted.

Mr. Johnson stated that the paragraph that began, The plain language, could be removed, but it was included since it underscored the example of withdrawing the lobbying relationship, and that the COE would not opine as to speculative facts and circumstances.

Commissioner Farach stated that he did not think the plain language of the code was clear as it related to that paragraph.

Commissioner Fiore said that the paragraph could include language that, notwithstanding this opinion, the COE would not tolerate a scheme to circumvent the code by terminating the lobbyist.

Commissioner Farach said that the first sentence in the paragraph that began, The plain language, could be removed.

Commissioner Galo suggested that the entire paragraph be deleted since the issue was previously discussed.

Commissioner Fiore said that the italics should be removed from the phrase, who was employed, in the paragraph that had removed section 2-442.

Mr. Johnson clarified that the word, contract, should not be italicized as well.

MOTION to approve proposed advisory opinion letter RQO 12-050 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0.

(CLERK'S NOTE: Commissioner Farach stated that the rest of the agenda items could be tabled to the next COE meeting since Mr. Johnson said that no immediacy to the remainder of the agenda items existed.)

XIV. EXECUTIVE DIRECTOR COMMENTS

XIV.a.

DISCUSSED: Ben Evans' Departure.

Gina A. Levesque, COE Executive Assistant, said that employee Ben Evans' last day in the office was July 13, 2012. She added that he had provided extensive work on the Social Media Policy update.

Mr. Johnson said that staff also wished to congratulate him on receiving a full-time job since COE staff had the budget to employ him only part-time.

Commissioner Harbison asked for staff to extend the COE's thanks to Mr. Evans.

AGENDA TABLED

MOTION to table the remainder of the agenda and adjourn. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

XII. **SOCIAL MEDIA UPDATE** – Tabled

XIII. **POLICY AND PROCEDURE CLARIFICATION RE: PROCESSION OF COMPLAINTS THAT ARE FILED WITHIN 30 DAYS OF ELECTION** – Tabled

XIV. See above on this page.

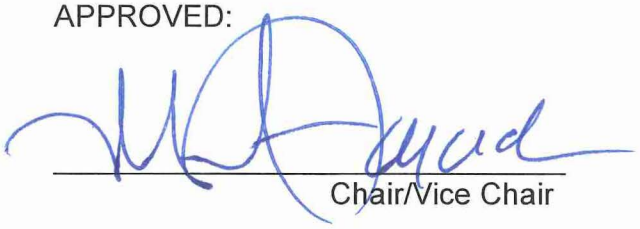
V. **COMMISSION COMMENTS** – Tabled

XVI. **PUBLIC COMMENTS** – Tabled

XVII. **ADJOURNMENT**

At 7:15 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair