

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

JANUARY 10, 2013

**THURSDAY
1: 38 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair – Arrived Later
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA

STAFF:

Mark E. Bannon, Commission on Ethics (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:

Dominique Marseille, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

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

Commissioner Farach stated that electronic devices should be turned off or turned to mute and anyone wishing to speak should submit a public comment card.

IV. APPROVAL OF MINUTES

a. December 6, 2012

MOTION to approve the December 6, 2012, minutes. Motion by Patricia Archer seconded by Ronald Harbison, and carried 4-0. Robin Fiore absent.

b. December 13, 2012

MOTION to approve the December 13, 2012, minutes. Motion by Daniel Galo seconded by Patricia Archer, and carried 4-0. Robin Fiore absent.

c. December 19, 2012

MOTION to approve the December 19, 2012, minutes. Motion by Ronald Harbison seconded by Daniel Galo, and carried 4-0. Robin Fiore absent.

(CLERK'S NOTE: Item XII. was presented at this time.)

XII. PUBLIC COMMENTS

XII.a.

DISCUSSED: Congratulations.

Gail Howden said that she was proud of Mr. Johnson as the first COE executive director, and that he would certainly serve as a role model to the incoming executive director. She congratulated Mr. Johnson and thanked him for his service with the COE.

Commissioner Farach said that the COE came into creation through the tireless work of public citizens. He added that although the COE would miss Mr. Johnson, he would continue performing the public's work in a different capacity.

RECESS

At 1:43 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 5:42 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, Galo, and Harbison present.

V. EXECUTIVE SESSIONS

V.a. C12-009

Commissioner Fiore read the following public report and final order of dismissal:

Complainant, Martha Webster, filed a complaint on September 4, 2012, alleging a possible ethics violation involving Respondent, Frederick Pinto, Village of Royal Palm Beach Councilman.

The complaint alleges Respondent misused his official position by participating and voting on two issues before the village council that specially financially benefited Palm Beach County Commissioner Jess Santamaria, Respondent's outside employer. Respondent is employed by the Palm Beach County Board of County Commissioners as an administrative assistant to Commissioner Santamaria.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use his official position in a manner in which he knows or should know with the exercise of reasonable care will result in a special financial benefit to him, not shared with similarly situated members of the general public or otherwise corruptly secure a special privilege, benefit, or exemption for himself or others.

On September 25, 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 October 4, 2012, with a recommendation of dismissal as legally insufficient.

The Commission on Ethics reviewed the complaint and memorandum of inquiry and requested that staff review and reconsider its finding and the matter was tabled. Upon further review, Alan S. Johnson, Executive Director, made the following legal sufficiency findings:

V.a. – CONTINUED

1. Allegations that Respondent violated Art. XIII, Section 2-443(a)(4), Misuse of public office or employment/outside employer conflict, are legally insufficient insofar as the Code of Ethics definition of outside employer specifically excludes another governmental entity.
2. Allegations that Respondent violated Art. XIII, Section 2-443(b), Corrupt misuse of official position, were determined to be legally sufficient on October 17, 2012.
3. Allegations that Respondent violated Art. XIII, Section 2-443(a)(1), Misuse of public office or employment/personal benefit, and Section 2-443 (c), Disclosure of Voting Conflicts, were determined to be legally sufficient on October 17, 2012.

The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on January 10, 2013, with a recommendation that no probable cause exists to believe there was a Code of Ethics violation; and the facts and circumstances warrant a dismissal with a letter of instruction to the Respondent. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause, recommendation of staff, as well as oral statements of the Respondent and advocate. The Commission also reviewed Article V, Section 2-260.3 of the Commission on Ethics Ordinance. At the conclusion of the hearing, the Commission on Ethics determined that there was no probable cause to believe that a violation of Art. XIII, Section 2-443 (a), *Misuse of public office or employment*, (b), *Corrupt misuse of official position*, and (c), *Disclosure of voting conflicts*, had occurred; however, a letter of instruction would be appropriate under the circumstances presented. Based on the facts and circumstances surrounding the alleged violations, the Commission finds that the public interest would not be served by proceeding further.

V.a. – CONTINUED

Therefore, it is:

Ordered and adjudged that no probable cause exists, and the complaint (C12-009) against Respondent, Frederick Pinto, is hereby dismissed, and a letter of instruction is to be issued in this case.

Done and ordered by the Palm Beach County Commission on Ethics in public session on January 10, 2013. Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

Commissioner Fiore read the following letter of instruction:

Martha Webster (Complainant) filed the above-captioned complaint against Frederick Pinto, Village of Royal Palm Beach Councilman (Respondent) alleging violations of the Palm Beach County Code of Ethics, Article XIII, Sections 2-443(a)(Misuse of public office) and Section 2-443(b)(Corrupt misuse of official position) and Section 2-443(c)(Disclosure of voting conflicts). The complaint alleges, in part, that Respondent, while a Town councilman, misused his official position by participating and voting on land use applications before the Village of Royal Palm Beach (the Village) Council, thereby benefiting his at-will supervisor, a Palm Beach County commissioner.

- **Facts and Analysis**

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

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V.a. – CONTINUED

Respondent is also employed by the Palm Beach County Board of County Commissioners, as an administrative assistant to a County commissioner. His employment status is at-will. As an at-will employee, Respondent is not subject to merit service. Therefore, his employment may be terminated at any time and without cause. Merit rules of conduct, disciplinary guidelines, adverse actions, and employee recourse only apply to permanent status employees. In short, Respondent's County position is dependent upon his ongoing relationship with the commissioner.

There is no documentary or testimonial evidence that Respondent actively participated in obtaining a benefit for his County supervisor or his business holdings prior to the matter coming before the Village Council. The record reflects, on two separate occasions, Respondent participated and voted on land use applications benefitting the business interests of his County supervisor. Both involved land use applications for prospective tenants of a shopping plaza owned in part by the commissioner. As a sitting municipal official, when he initially considered becoming a County administrative assistant, Respondent had asked one of the Village's Attorneys whether a conflict of interest would prevent his accepting that position. According to the attorney for the Village, she informed him only that there was no inherent conflict regarding his position; however, she did not opine as to conflicts regarding any specific issues that may come before his council. Respondent did not ask the COE for an advisory opinion on this matter.

Potentially, giving a financial benefit to his at-will supervisor may also inure to Respondent's own financial interest in maintaining his employment as administrative assistant. Under the facts and circumstances discovered during a COE inquiry and investigation, there is no evidence that Respondent's actions involved a quid pro quo, or that Respondent otherwise actively participated in steering or otherwise facilitating a financial benefit to the commissioner or his business interests to obtain the good will of his supervisor. However, there is an appearance of impropriety when Respondent's official acts as Village councilman may benefit the supervisor of his outside government employer. This is especially true when the government employment is at-will and reliant on the good will of his supervisor.

V.a. – CONTINUED

- **Holding**

Section 2-443 Prohibited conduct, states in relevant part:

(a) Misuse of Public Office or Employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, *in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit*, not shared with similarly situated members of the general public, for any of the following persons or entities: (Emphasis added)

(1) Himself or herself;

(4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

(b) Corrupt Misuse of Official Position. An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, “corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

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V.a. – CONTINUED

(c) Disclosure of Voting Conflicts. County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, Section 112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the County Commission on Ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

Section 2-442. Definitions, states in part as follows:

Outside Employer or Business includes:

(1) Any entity, other than the County, the State, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold, or produced. For purposes of this definition, “compensation” does not include reimbursement for necessary expenses, including traveling expenses.

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V.a. – CONTINUED

Section 2-260.3. Dismissal of Complaints, states as follows:

Notwithstanding any other provisions of this division, the Commission on Ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional, or insubstantial. In the event the Commission on Ethics dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public report stating with particularity its reasons for the dismissal. The Commission on Ethics may, at the request of the State attorney or any other law enforcement agency, stay an ongoing proceeding. The Commission on Ethics shall not interfere with any ongoing criminal investigation of the State attorney or the U.S. attorney for the Southern District of Florida.

Respondent did participate and vote on two issues involving land use applications submitted by prospective tenants of the shopping center. These applications benefited the shopping center, a business interest of the Respondent's County government supervisor. Respondent's public job as an at-will employee is contingent on the relationship between himself and the commissioner and may be terminated without cause at any time. The fact that the language of the Code excludes this relationship as a violation of the Code by definition does not change the appearance of impropriety when a subordinate employee uses his or her official position to benefit their government supervisor.

The Commission is mindful that the facts and circumstances indicate Respondent was not personally involved in promoting or facilitating the transactions that benefited the commissioner, nor did he attempt to influence Village staff in their recommendation to Council. The Commission is also mindful of the fact that Respondent did ask a Village attorney whether taking the County position would require him to resign his position as council member. However, he did not inquire as to conflicts of interest inherent in matters pertaining to his County government supervisor's personal business holdings in the Village, nor did he request an advisory opinion from this Commission.

V.a. – CONTINUED

In light of the facts and circumstances known to the Commission on Ethics, the complaint was dismissed by order of the Commission with this letter of instruction. The COE believes that the alleged violation was inadvertent and unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of ethics complaint C12-009, along with this letter of instruction, is to serve as notice that actions taken by Respondent in participating and voting on issues benefiting his at-will supervisor, to the extent that the benefit is not available to members of the general public, creates an appearance that the vote is to engender good will or otherwise enhance his position with that government supervisor. Respondent is instructed to be more careful to ensure that he avoids such potential conflicts in the future when presented with issues specially benefitting him or his government supervisor's outside business interests and to conform his activities to this letter of instruction and to the requirements of Section 2-443(a), (b), and (c).

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on January 10, 2013.
Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the letter of instruction.)

Commissioner Archer suggested that the documentation for executive summaries have a case number on the bottom of each page, along with the meeting date where the case was discussed so that the commissioners would know which documentation was the most current.

Gina Levesque, COE Executive Assistant said that she would implement Commissioner Archer's suggestion.

V.b. C12-015 – Not discussed

V.c. C12-016 – Not discussed

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Opinion (RQO) 12-081

(CLERK'S NOTE: See below for continuation of item VI.a.)

VI.b. RQO 12-082

VI.c. RQO 12-085

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

VI.a. – CONTINUED

PUBLIC COMMENT: John Greene.

Mr. Johnson said that Village of Wellington (Village) Councilman John Greene should follow the suggestions in his advisory opinion. He said that if Councilman Greene did solicit from vendors, lobbyists, principals, and employers of lobbyists of the Village, he was required to maintain a log and a log had to be maintained by others involved in the soliciting.

Commissioner Farach thanked Councilman Greene for requesting the COE's advice. He said that Mr. Greene's effort showed that the Councilman tried to engender public trust in the government.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 12-080

Staff Counsel Megan Rogers said that:

- A municipal employee asked whether she was prohibited under the Code of Ethics (Code) to consider and award a bid submitted by her brother-in-law.

VIII.a. – CONTINUED

- Staff submitted that:
 - Municipal employees were prohibited from using their office to give certain persons or entities a special financial benefit not shared with similarly situated members of the general public.
 - An employee's brother-in-law was not among the persons and entities specified in the Misuse of Office, sections (1) through (7).
 - The issue of an appearance of impropriety was clearly present in such an arrangement.
 - Staff recommended that the employee's brother-in-law submit a proposal to another member of her staff or another department supervisor to review specifications and issue an award.
- Previous advisory opinion, RQO 11-037 was similar in circumstances and dealt with a sibling relationship between a Town of Palm Beach (Town) building official and his brother.
 - The opinion was based on whether the Town officials' approval of his brother's work would create a prohibited conflict of interest.
 - The COE concluded that no prohibited conflict of interest existed under the Code's definition when a Town official completed his required duties and did not act or fail to act in a manner resulting in a special financial benefit to his brother, not shared by similarly situated members of the general public.
 - The COE had advised that the Town create a wall between the siblings regarding existing approvals.
- Staff recommended that RQO 11-037's opinion be followed in RQO 12-080.

VIII.a. – CONTINUED

Commissioner Archer expressed concern regarding the language that another member of the employee's staff or another department supervisor could review specifications. She said that it could be problematic when another staff member was the employee's subordinate.

Ms. Rogers said that the recommendation could be edited and reviewed further.

Commissioner Fiore said that it was odd that a step-sibling who may not even be in one's life would be considered under the Code, yet an in-law was not included in the Code.

Ms. Rogers said that:

- It was difficult to determine which type of benefit was contributed by a spouse to a sister which was a covered entity under the Code.
- Staff would not review someone's personal finances when making an advisory opinion recommendation.
- Staff's recommended that an in-law was not covered under the Code; however, the employee ran the risk of a conflict; therefore, the situation should be handled differently.
- If the spouse of the employee's sibling was a part owner in the business, the scenario would fall under the Code, but based on the facts presented, no business relationship between the sibling and his/her spouse existed outside of being married.
- Staff had performed a search of shareholders for the in-laws' business and the employee's sibling was not listed.

Commissioner Farach said that a previous concern had been raised about the Code's ordinance being insufficient regarding domestic partners. He questioned why the Code did not include the spouse of an individual that was covered under the Code, since that spouse would be strongly suspected of sharing financial benefits with the person that the Code covered.

VIII.a. – CONTINUED

Mr. Johnson responded to Commissioner Farach's comment by saying that domestic partners were covered under the Code.

At Commissioner Fiore suggestion, Ms. Rogers stated that sealed bids could be a potential mechanism to use. She agreed that if a complaint was filed claiming a Misuse of Official Position, a Misuse of Office, or a Corrupt Intent, the COE would conduct further investigations.

Commissioner Galo commented that someone could be considered an in-law through different ways; and Ms. Rogers informed the commission that the proposed opinion was essentially advising that the employee be wary of the situation.

MOTION to approve proposed advisory opinion letter RQO 12-080. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-1. Daniel Galo opposed.

IX. ANNUAL REPORT

Mr. Johnson, while giving a power point presentation, said that:

- For fiscal year (FY) 2011-2012, the COE had expended 88 percent of its budget and had savings of \$70,000.
- Due to the COE's fiscal prudence in year's past, a reserve was being carried forward; however, it was slowly being expended.
- An ad valorem issue would exist in FY 2014 and 2015. The COE's current ad valorem funds were \$476,000, and it had remained the same since its inception.
- In the following fiscal year, the COE would have to address the reserve issue with the Board of County Commissioners.
- Visits to the COE's website increased to approximately 400,000 visitors a year.

IX. – CONTINUED

- A log of hotline calls to the COE for the year 2012 revealed 560 overall calls; 102 calls were referred to another agency; and, 23 calls resulted in an inquiry or an investigation.
- There were 85 advisory opinions for the year 2012 and 249 opinions overall since June 2010.
- Staff had instituted a process to determine whether an advisory opinion received by email or through a phone call could be answered through an already existing advisory opinion.
 - If an issue was simple, staff would not provide individual advice over the phone, but advise the individual to reference previous advisory opinions.
 - Previous advisory opinions may be emailed to the requester.
 - The email to a requester would include a statement that if the individual still had questions he/she could contact the COE; however, a written letter was required for the COE to provide answers.
 - There were 58 referrals made to existing opinions, in addition to the 85 total advisory opinions for the year.
- Since the COE had filed advisory opinions on its Website, people were able to find responses to act accordingly to their concerns.
- Staff had performed 40 in-person trainings, 50 Digital Video Disks (DVD) had been sent out, and numerous outreach presentations were given to community groups.
- In June 2013, there would be a live retraining of officials and employees.
- In 2012, the COE processed 16 sworn complaints and 33 inquiries based on unsworn or anonymous complaints.
 - Five sworn complaints were dismissed for lack of legal sufficiency;

IX. – CONTINUED

- Seven sworn complaints were found to be legally sufficient; and,
- As of January 1, 2013, four additional cases were pending legal sufficiency and probable cause determinations.
- The COE had received complaints regarding:
 - misuse of office;
 - gift law;
 - voting conflicts; and,
 - lobbyist registration.
- The COE and its staff should be congratulated for the long hours that each member worked.

Commissioner Fiore congratulated the COE staff for its work and Commissioner Farach said that Mr. Johnson's annual report was well done and that it got the COE's message across in a presentable format.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: COE Staff.

Mr. Johnson said that it had been a pleasure to work with the COE staff and that he was moving on to serve the newly elected State Attorney Dave Aronberg as one of his chief assistants.

XI. COMMISSION COMMENTS

XI.a.

DISCUSSED: Appreciation.

Commissioner Fiore said that she could not have served on the COE without Mr. Johnson's support. She said that the COE had been a great learning experience, and she thanked staff for its support. She added that Mr. Johnson had been a great leader and lawyer, an example to others, and an all-around great human being.

Commissioner Harbison said that he had grown to rely on Mr. Johnson and that he would be missed. He said that Mr. Johnson had created a culture not only with his legal interpretations, but as a leader in the COE office. He added that Mr. Johnson's professionalism was demonstrated in staff's admiration of him.

Commissioner Archer said that she was impressed with all of the COE members and with Mr. Johnson for his unbiased point of view. She said that Mr. Johnson would be missed and that she wished him well.

Commissioner Galo said that he was impressed with Mr. Johnson's accomplishments, and that he wished Mr. Johnson the best of luck.

Commissioner Farach said that Mr. Johnson had been the "heart and soul" of the COE from the start, and that he had created a great culture of ethics. He added that Mr. Johnson meant a lot to the COE and to the people of Palm Beach County.

XII. PUBLIC COMMENTS – Page 2

XIII. ADJOURNMENT

MOTION to adjourn. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.

At 6:44 p.m., the chair declared the meeting adjourned.

APPROVED: 2/07/2013



Chair/Vice Chair