



# Palm Beach County Commission on Ethics

## Commissioners

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

## Executive Director

Alan S. Johnson

March 4, 2011

Mr. Manuel Ayala  
REG Architects, Inc.  
120 S. Dixie Highway, Suite 201  
West Palm Beach, FL 33401

RE: RQO 11-003  
Prohibited Contractual Relationships/Misuse of Public Office

Dear Mr. Ayala,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on March 3, 2011.

YOU ASKED in an email dated January 28, 2011 whether it is necessary for you to obtain a waiver from the Board of County Commissioners (BCC) in order to be appointed to a seat on the Construction Industry Licensing Board (CILB). You supplied additional information through e-mail and by telephone discussions with COE staff, wherein you indicated that while your outside employer, REG Architects (REG), has no contracts with Palm Beach County; it is a sub-contractor for Miller Legg, a civil engineering firm, on a county project in Jupiter known as the Riverbend Park Project. Specific county projects do not come before the CILB for review or approval, as their authority lies only with licensing issues.

IN SUM, based on the facts you have submitted, since your outside employer, REG, has not entered into any contracts or other transactions for goods or services with Palm Beach County, it would not be a violation of the code of ethics for you to be a member of CLIB. Therefore, a waiver would not be necessary for you to be appointed to the CILB under these facts. However, if appointed, you would be required to abstain from voting and participation in any matter before the CILB that involves a financial benefit to you, your spouse or domestic partner, or any member of your household, your outside employer or business and that of your spouse or domestic partner, any customer or client of your outside employer or business, any of your relatives, a substantial debtor of yours, or any nongovernmental civic, union, social, charitable or religious organization of which you or your spouse or domestic partner are an officer or director.

THE FACTS as we understand them are as follows:

You are applying for appointment to the Palm Beach County Construction Industry Licensing Board (CILB), an advisory board whose members are appointed by the Board of County Commissioners (BCC). You are currently employed with the firm of REG Architects, Inc. (REG), as a project manager. REG has no contracts for goods or services with Palm Beach County. However, REG is a sub-contractor for civil engineering firm Miller Legg on a county project known as Riverbend Park. You personally are not directly involved in this project, nor is the CILB involved substantively in this project.

According to the Palm Beach County website ([www.pbcgov.com](http://www.pbcgov.com)), the function of the twelve member Construction Industry Licensing Board (CILB) is, "To establish qualifications and competency of contractors that work within the County. The Board also provides for the testing and licensing of these contractors and is empowered to revoke



# Palm Beach County Commission on Ethics

## Commissioners

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

## Executive Director

Alan S. Johnson

licenses.” Because of the regulatory nature of the duties and responsibilities of the CILB, It is possible that either your outside employer, or a customer or client of your outside employer could appear before the CILB for licensing review or action while you are serving on this board.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

The Palm Beach County Code of Ethics Section 2-442, *Definitions* states in relevant part:

*Official or employee means any official or employee of the county, whether paid or unpaid...and members appointed by the board of county commissioners to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity. (Emphasis added)*

As a CILB member, you would fall under the definition of an “official” and thus would be subject to the jurisdiction of the code of ethics. Further, as listed below, your employment with REG would be considered as “outside employment” for the purposes of the code and Miller Legg a customer or client.

Section 2-442, *Definitions* states in relevant part:

*Outside employer or business includes:*

- (1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, *of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced, (Emphasis added)*

Section 2-443, *Prohibited conduct*, states as follows 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 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;
- (2) A member of his or her household, including a domestic partner and his or her dependents, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;





# Palm Beach County Commission on Ethics

## Commissioners

Edward Rodgers, *Chair*

Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

## Executive Director

Alan S. Johnson

- (5) A customer or client of the official or employee;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner--"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000.00) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

(b) *Disclosure of voting conflicts.* County officials shall abstain from voting and not participate in any matter that will result in a financial benefit as set forth in subsections (a)(1) through (7) above.

(c) *Prohibited contractual relationships.* No official or employee shall enter into any contract with or other transaction for goods or services with the county. This prohibition extends to all contracts or transactions between the county or any person or agency acting for the county, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. (Emphasis added)

Under the provisions of § 2-443(c), if your outside employer did have contracts for goods or services with Palm Beach County, you would have needed to obtain a waiver from the Palm Beach County Board of County Commissioners under the waiver provisions of 2-443(d) in order to serve on CILB.

IN SUMMARY, under the facts you have presented, it is not necessary for you to obtain a waiver from the BCC to serve as a member of the CILB, assuming that your outside employer does not enter into any contracts for goods and services with Palm Beach County during your tenure on the Board. You are further cautioned that you may not use your position on the CILB for the financial benefit of any person or entity listed in Section 2-443 (a) (1-7). Further, you must disclose and abstain from voting on any matter before the CILB that could result in any financial benefit for any of these entities or people. Finally, it is imperative that you understand that as a member of the CILB, you must not participate in any licensing review or action taken by the CILB regarding any matters involving your outside employer or any of its customers or clients.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
ASJ/meb/gal