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News Release

For Immediate Release

April 6, 2012

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Summary of Commission on Ethics Meeting Held on April 5, 2012

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on April 5, 2012:

- Former Ethics Commissioner Bruce Reinhart was presented with an award for his two years of service to the COE and the people of Palm Beach County.
- Staff presented the 2011 Annual Report detailing the work of the COE in the 2011 calendar year. The Annual Report is available on the COE website at <http://www.palmbeachcountyethics.com/publications.htm>.
- The COE adopted several amendments to its Rules of Procedure to better reflect the procedures outlined by the Code of Ethics for requesting and processing advisory opinions.
- One complaint was heard and dismissed in executive session. All documents pertaining to complaint C11-026 are published on the COE website at <http://www.palmbeachcountyethics.com/complaints.htm>.

The COE took the following action:

C11-026: The COE issued a public report and final order of dismissal. This matter came before the COE based upon a sworn complaint filed by the Inspector General. A sworn complaint filed by the Inspector General is legally sufficient as a matter of law and therefore, the COE was obligated to commence a preliminary investigation. The COE reviewed and considered the investigative report, documentary submissions and the recommendation of staff and determined that there was no evidence to support a finding of probable cause in this matter.

Sixteen (16) advisory opinions were approved. The full opinions are published and available at: <http://www.palmbeachcountyethics.com/ethics/opinions.htm>

RQO 11-116: A city attorney asked how the \$10,000 threshold value of goods or services provided to a customer or client of an official or employee's outside employer is calculated when the employer is a large national financial institution. Secondly, in the event that an official or employee's outside employer is divided into operational departments and/or divisions, should all goods and services for all departments be included in the calculation of the threshold amount. Finally, does the reference in the code to the "previous 24 month period" suggest that each time

a matter comes before a governing body, an official recalculate the aggregate value of goods or services provided to a customer or client of their outside employer to ascertain whether or not the \$10,000 threshold has been met.

The COE opined as follows: A customer or client is defined as a person or entity to which an official's outside employer or business has provided at least \$10,000 worth of goods or services during the past 24 months. With respect to a banking institution, \$10,000 means the value of the total goods or services provided to a customer or client over that period whether in the form of goods, fees, or financial services, including mortgage interest costs, if the mortgage is serviced by the bank. This calculation must be made each time an official act is to be taken.

RQO 11-120: A city attorney asked whether an elected official, whose outside employer is a large national bank or financial institution, is required to abstain in every instance any client or customer of the outside employer appears before her board. A related request was submitted on November 1, 2011 and an opinion was published as to the reasonable care standard regarding knowledge of a conflict.¹ Subsequently, the city attorney submitted additional requests on November 30, 2011 and December 19, 2011 asking whether the term *similarly situated members of the general public* would eliminate the customer or client conflict under certain circumstances.

The COE opined as follows: An official who is employed by a large national bank as a "business banker" at a local bank branch and responsible for opening small business/customer accounts, does not automatically have a conflict under §2-443(a) (5) of the Revised Code of Ethics when customers of the bank appear before her, due to the fact that the pool (i.e., number of similarly situated persons) of bank customers is sufficiently large to avoid a violation of the Code. The numerosity of the customer pool may be so large that a general customer, without more, is considered a member of the "general public."

However, this rule does not offer complete protection. A significant customer or client may not be similarly situated to other normal and usual bank customers because of the benefit that may flow to the banker's employer. Similarly, customers or clients who directly conduct business with the employee/official or do business within the official's particular department, store or branch are not similarly situated to the large majority of nationwide customers or clients who have no such nexus to the official.

RQO 12-011: A county employee asked whether he was permitted to attend a professional development conference and receive travel and related expense reimbursement where attendance is for educational purposes, will be in his official capacity, and has been reviewed and approved by his supervisor.

The COE opined as follows: A county employee is not prohibited from attending a professional development conference in his or her official capacity so long as the employee is attending for county purposes and the trip is approved by the employee's supervisor. Where travel expenses are not provided directly or indirectly by a county contractor, vendor, service provider, bidder or proposer, county employees are not required to obtain a travel expense reimbursement waiver from the BCC. Lastly, registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses are not subject to gift reporting requirements, if an employee's attendance is for governmental purposes, related to their duties and responsibilities as a county employee, and approved by supervisory staff.

RQO 12-012: A member of a municipal advisory board asked whether she could enter into a publishing agreement with a publishing company that is a former vendor of the municipality she serves to write a book about the history of Palm Beach County.

¹ RQO 11-099 (knowledge of a conflict is either actual or constructive and there is no bright line definition of "the exercise of reasonable care" as required under the §2-443(a) misuse of office provision of the code.)

The COE opined as follows: The advisory board member is not prohibited from contracting with a former vendor of her municipality. Based upon the facts submitted, the publishing company is not an active vendor of the city, and does not sell or offer goods or services to the subject advisory board. An agreement to publish a book does not constitute outside employment as defined in the Code of Ethics. Notwithstanding, an official may not use his or her official position to give a special financial benefit to themselves or their publishing company in the promotion of the book.

RQO 12-013: A county employee asked whether a county department may provide employees with a stipend for training and licensing costs, where such training and licensing is required by an employee's position, and if so, does such a stipend constitute a prohibited or reportable gift.

The COE opined as follows: A "gift" refers to the transfer of anything of value without adequate and lawful consideration. However, a license fee or training costs paid by the county for an employee's registration fees or other related costs associated with educational seminars where attendance is for governmental purposes (as determined by supervisory personnel), related to an employee's official duties and responsibilities, is excluded from the definition of gift under the Code of Ethics and is therefore neither prohibited nor reportable.

RQO 12-014: A county employee asked whether employees are permitted to attend an educational seminar provided by a vendor of the county. The attendance was determined by supervisory personnel to be for educational purposes in their official capacity.

The COE opined as follows: County employees are not prohibited from attending a tuition free educational seminar in their official capacity as county employees, for a public purpose, as determined by supervisory personnel, notwithstanding the fact that the training is provided by a vendor of the county. Registration fees associated with local educational conferences where attendance is for governmental purposes and related to an employee's official duties and responsibilities are excluded from the definition of gift. However, employees may not accept anything else of an aggregate value in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases to, or lobbies the county.

RQO 12-015: A county employee asked whether it would violate the code of ethics for a county employee to accept part-time employment as consultant to a local community redevelopment agency where the county employee would be working with county vendors on the CRA project.

The COE opined as follows: The Code of Ethics prohibits public employees from working for an outside employer who contracts with their public employer, unless one of several exceptions applies. Based upon the information provided, the county does not have contracts with this CRA. In addition, the Code of Ethics specifically exempts other governmental entities from the definition of "outside employer or business." Accordingly, a county employee is not prohibited by the Code of Ethics from accepting outside employment with a municipal redevelopment agency. Notwithstanding, the county may apply more stringent conditions or regulations concerning outside employment, by merit rule or other internal policy or procedure. Public employees must at all times keep in mind that they may not use their official position in a corrupt manner or a manner that will result in a special financial benefit to themselves.

RQO 12-016: A municipal fire rescue chief asked whether including the cost of employee travel expenses for pre-build conferences and acceptance conferences for high-cost fire-rescue and other fire apparatus vehicles in the contract price of the vehicles violates the prohibition on accepting travel expenses from vendors section of the Code of Ethics.

The COE opined as follows: While public employees may not accept, directly or indirectly, travel expenses from a municipal vendor, service provider, bidder or proposer, this prohibition does not apply to expenses ultimately

paid by the municipality from municipal funds pursuant to a contract for the purchase of goods, where the purpose of the travel is to ensure that the terms of the contract are fulfilled.

RQO 12-017: A municipal ethics officer asked whether city employees may accept reduced tuition to attend a Florida International University online MBA program. Discounted tuition is not available to all members of the general public but only to students whose employer or family member's employer has enrolled in a corporate partnership program with the university. FIU does not vend, lease or lobby the city.

The COE opined as follows: City employees are not prohibited from accepting a tuition discount or scholarship from Florida International University (FIU) based upon their status as a city employee, provided that there is no quid pro quo or special treatment or privileges given to FIU or its agent Academic Partnerships, in exchange for offering these scholarships. For purposes of gift law reporting, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, are reportable gifts under the Code of Ethics.

RQO 12-018: A county commissioner asked whether she may receive travel reimbursement from a Robert Wood Johnson Foundation (RWJF) and a Quantum Foundation (QF) grant to the School Board of Palm Beach County (School Board) for attendance at an annual training for the Healthy Kids, Healthy Communities Project (Project) as a community partner with the School Board.

The COE opined as follows: Neither RWJF nor QF is a vendor or principal of lobbyists of Palm Beach County government. Therefore, the Code of Ethics does not prohibit an elected official from attending and receiving travel reimbursement for the event. Local elected officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are not subject to the annual gift reporting requirements under §2-444(f)(2) of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

RQO 12-019: An assistant county administrator asked whether hosting a software program, available at no cost to the county and for the benefit of the Emergency Operations Department ("EOD"), violates the Palm Beach County Code of Ethics.

The COE opined as follows: The Code of Ethics does not prohibit a county department from using a free software program that is available to any governmental entity, corporation or other institution without a fee. The COE cannot opine as to internal county or departmental policy and procedure regarding such an arrangement.

RQO 12-020: A municipal employee asked whether she could solicit local restaurants for donations to provide lunch and dinner to municipal 911 operators in recognition of National Telecommunicator Week.

The COE opined as follows: While solicitation of donations from non-vendors or lobbyists of an employee's municipality may not be prohibited, provided there is no quid pro quo involved, public employees are prohibited from soliciting donations from vendors, lobbyists, principals or employers of lobbyists of the city if the solicited donations will personally benefit themselves, a relative or household member or a fellow employee.

RQO 12-021: A municipal parks and recreation director asked whether giving resident-only public facilities discounts or other resident privileges to municipal employees who are not city residents violates the Code of Ethics.

The COE opined as follows: The Code of Ethics does not prohibit a public employer from offering its non-resident employees enhanced access to public facilities and reduced fees for such access. Depending upon the facts and circumstances, if the value of the discount received by an employee exceeds \$100, it may be a reportable gift.

RQO 12-022: A county commissioner asked whether an elected official whose outside business provides rental space to a municipality may participate and vote on interlocal agreements, annexation issues and lawsuits between the county government he serves and his municipal customer or client.

The COE opined as follows: Officials whose outside business or employer contracts with other governments are not prohibited from voting on issues between their government-client and the government they serve, provided that the matter is unrelated to their business relationship with the government-client. Voting or participating on issues that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics. When presented with a situation that would benefit themselves, or their outside employer or business, an official must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting, and not participate in or influence the process.

RQO 12-023: A county commissioner asked whether the revised code of ethics permits an elected official to be an honoree at nonprofit charitable fund-raising events.

The COE opined as follows: Testimonial functions, held as a fundraiser honoring a public servant, do not violate §2-443 of the Code of Ethics (misuse of public office) unless the honoree, or his or her spouse or domestic partner, is an officer or director of the organization or the covered honoree otherwise uses his or her official position to obtain a special financial benefit.

The Code of Ethics prohibits the solicitation or acceptance of a gift in excess of \$100 annually in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist, unless a transparent solicitation log is maintained and submitted as specified in §2-444(h). This prohibition extends, directly or indirectly, to the public official, *or any other person or business entity on his or her behalf*. If the charitable organization solicits from vendors or lobbyists of county government, the organization, on behalf of the honoree, must comply with these provisions. Lastly, great care must be taken that all state statutes are adhered to, including strict requirements involving registration and disclosure for testimonial events.

RQO 12-024: The executive director of a local nonprofit asked whether his foundation may give tickets valued in excess of \$100 to municipal library employees to attend a fund-raising event.

The COE opined as follows: Nonprofit organizations that do not vend, lease or lobby an employee's public entity are not prohibited from distributing tickets to city employees, so long as there is no *quid pro quo* or other special consideration, and the gift is not given for the past, present or future performance or nonperformance of a legal duty or official action. The value of the gift is the face value (public cost) of the ticket. A separate item, given as an event favor, must be reported separately if valued at more than \$100.

A detailed explanation of all agenda items is available at the COE's website:
<http://www.palmbeachcountyethics.com/ethics/meetings.htm>

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