

**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL WORKSHOP
Jarvis Hall
4505 Ocean Drive
Tuesday, February 24, 2015
5:00 PM**

1. CALL TO ORDER – ETHICS TRAINING

Mayor Scot Sasser called the workshop to order at 5:00 p.m. Also present were Vice Mayor Chris Vincent, Commissioner Stuart Dodd, Commissioner Elliot Sokolow, Town Manager Connie Hoffmann, and Town Attorneys Susan L. Trevarthen and Robert Meyers.

Town Attorney Trevarthen introduced Robert Meyers, a partner in the firm of Weiss Serota Helfman Pastoriza Cole & Boniske, who would lead tonight's workshop.

2. ETHICS WORKSHOP FOR TOWN OF LAUDERDALE-BY-THE-SEA ELECTED OFFICIALS

a. Overview of Lobbying and Lobbyists under the Broward Code of Ethics

Mr. Meyers began by providing the definitions of lobbying and lobbyists, noting that these definitions are provided by the Broward Code of Ethics. *Lobbying* is defined as communication by any means to a covered individual regarding any item that will foreseeably be decided by the final decision-making authority, if the communication is intended to persuade or convince. If a Town Commissioner meets with an individual who is defined as a lobbyist, but that individual makes no attempt to persuade or influence the Commissioner, the individual is not lobbying and there is no reason to record the meeting in a contact log.

Town Attorney Trevarthen further clarified that if a Commissioner is aware that an item will eventually be voted upon by the Town Commission, even years before that item appears on a Commission agenda, the item is considered to be foreseeable. Mr. Meyers added that lobbying does not include any appearance on the record at a public meeting or hearing.

Mr. Meyers continued that a *lobbyist* is defined as someone who is retained with or without compensation, or is employed by an entity or individual for the purposes of lobbying. An exception to this definition allows for communication by an individual who is not primarily employed to lobby on behalf of an employer. An individual communicating on his/her own behalf, such as a Town resident emailing a Commissioner regarding an issue, is not considered to be a lobbyist. An attorney representing a client is considered a lobbyist if s/he meets with an individual Commissioner to encourage them to take action on an issue.

Mr. Meyers emphasized the importance of whether or not an individual is authorized or retained to represent another entity in determining that individual's status. Town Attorney Trevarthen noted that in Broward County, no documentation is required to show this retention or authorization.

Individuals not included in the definition of a lobbyist are:

- Elected officials;
- Employees/appointees of Broward County or any municipality when appearing in their official capacity;
- Individuals communicating on their own behalf or on behalf on their employer, when that individual is not retained for the purpose of lobbying;
- Employees/officers/board members of civic, condominium, or homeowners' associations if the issue on which s/he is appearing would affect that association;
- Employees/officers/board members of a not-for-profit public interest group if the issue on which s/he is appearing would affect that organization.

Mr. Meyers moved on to the issue of contact logs, explaining that the Broward County Ethics Ordinance states lobbying activity between a lobbyist and a Commissioner must be recorded. If this contact takes place on Town property, it is the lobbyist's responsibility to record the communication in a contact log. This also applies to emails sent to a Commissioner's Town email address, as servers are located at Town Hall.

Mr. Meyers continued, however, that the Inspector General has taken the position that although it is the lobbyist's responsibility to record on-site contact, the Town official becomes responsible for this record. If a lobbyist has contact with a Town official at an off-site location, and does not raise any issues related to Town business, neither party must record the contact; however, if the lobbyist does discuss a Town issue, it is then the official's responsibility to record the contact within 10 days of its occurrence or prior to any vote on the issue discussed, whichever comes first. Mr. Meyers added that if a lobbyist leaves a voice message for a Town official on his or her home telephone, it would be prudent to record this contact as well.

It was noted that the Town's email servers are located in Town Hall, which raises the issue of whether or not email communication, even if an official is not present, occurs on Town property. The Commissioners agreed by consensus to request a safe harbor opinion from Town Attorney Trevarthen on this issue.

Mr. Meyers addressed the issue of meeting with unregistered lobbyists, stating that contact with these individuals should be logged by Town officials. He cautioned against meeting with unregistered lobbyists, advising that if the individual identifies himself as unregistered, it would be prudent to terminate the contact until appropriate registration has been made. If the individual fails to register as a lobbyist, he advised against meeting with this individual unless an exception applies. Town Attorney Trevarthen recommended

that Staff make the Commissioners aware of any individual who may be a potential lobbyist but has not registered as such.

Mr. Meyers clarified that a business owner, representing his or her own business interests, is generally not considered to be a lobbyist, as that owner would be communicating on his/her own behalf. A property owner representing a tenant, however, is not typically retained by or authorized to lobby on behalf of that tenant, and therefore represents more of a gray area. Town Attorney Trevarthen advised that a safe harbor opinion would also be provided on this issue.

b. Broward Office of Inspector General – Developments

Mr. Meyers moved on to the Office of the Inspector General (OIG), including guidelines released with respect to different provisions of the Broward Ethics Code. Issues addressed in these guidelines include lobbying and lobbyists, reporting requirements, and outside employment, among other items. Mr. Meyers pointed out that the OIG has no authority under the law to interpret the Broward Ethics Code: interpretations are made by local government attorneys. This means if a safe harbor opinion is issued by an attorney representing a municipality or county, the opinion supersedes the OIG's guidelines; however, if no opinion on a guideline has been offered by the appropriate counsel, following the guideline is recommended. A safe harbor opinion issued before a guideline on the same topic is also considered to take precedence.

Town Attorney Trevarthen explained that the reason for this clarification is that the Broward Ethics Code states local government attorneys have the authority to issue safe harbor opinions; however, Code makes no mention of the issuance of guidelines by the OIG. She urged the Commissioners to request a safe harbor opinion if an issue arises on which they have questions or concerns, as any such opinion protects them.

Mr. Meyers continued that the OIG is enabled by the Ethics Ordinance to issue reports and conduct audits. Its authority is tied to investigating misconduct and/or gross mismanagement of any local, state, or federal law, ordinance, policy, or regulation. He noted, however, that if the OIG suspects gross mismanagement, it must first issue a preliminary report and provide it to the subject of that report for a response. This preliminary report is intended to be confidential. Once the response is filed with the OIG, the Inspector General issues a final report that may or may not take the response into account. The final report and all other documents in the file then become public record.

He advised that reports are not to be issued when allegations of misconduct are actively under investigation. Once the Inspector General determines that there is probable cause to proceed, s/he is required by Ordinance to refer the matter to the appropriate agency for further action. These agencies may include the Florida Elections Commission, the State or U.S. Attorney's Office, the Florida Commission on Ethics, or other entities appropriate to the subject. If a preliminary report is issued in an investigation of misconduct, due process has been violated.

Mr. Meyers described the proper way to proceed as conducting an investigation, collecting evidence, and determining probable cause. If probable cause is found, the issue should then be referred to the Florida Commission on Ethics as a formal complaint. The Commission on Ethics then determines whether or not the complaint is legally sufficient, then holds a confidential probable cause hearing at which the elected official may defend him/herself. After this confidential session, the Commission on Ethics determines whether or not probable cause exists. If there is probable cause, all information becomes public and the official is entitled to a public hearing. If a report on the elected official is made public by the OIG, however, the official does not have his/her day in court.

Mr. Meyers continued that the Broward League of Cities has created an Ethics Task Force, which compiled a list of concerns related to the OIG from local government attorneys and submitted the list to the President of the League of Cities. The report was then presented to the oversight committee responsible for the retention of the Inspector General. It was noted that while the oversight committee is the sole means of recourse related to the OIG, the actions it may take are limited.

It was confirmed that the disclosure of outside employment, and the income generated by this employment, is also part of the Broward Code of Ethics. Some local governments have passed charter amendments to opt out of this requirement. Lauderdale-By-The-Sea has exercised no such option, although other municipalities, including Wilton Manors and Hillsboro Beach, have amended their charters to specifically opt out of the reporting of outside employment and remuneration, as well as the limitation on outside employment.

c. Recap of Recent Safe Harbor / Ethics Opinions

Mr. Meyers recalled that local officials in Broward County may not accept gifts from certain sources, including lobbyists, vendors, contractors, potential suppliers, or other local governments. The size of the gift makes no difference to this regulation, which extends to the elected official's family. If the entity offering a gift is not a prohibited donor, officials may accept gifts of up to \$50 in value in their official capacity. If the value of the gift is greater than \$50, the individual or the Town must reimburse the difference. If a gift is given to an elected individual outside his or her official capacity, there are no limits on the value of the gift.

With regard to invitations to events, an elected official may attend if the cost of his or her attendance is not underwritten by a lobbyist, vendor, contractor, potential supplier, or local government. If the cost of attendance is more than \$50, the official may either reimburse the difference or choose not to eat or drink at the event. If the Town pays for attendance, there is no issue.

In the case of a charitable event, State law requires that the amount of the ticket price that constitutes a charitable contribution be determined: for example, if \$60 of a \$100

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ticket goes toward charity, the cost of the ticket is deemed to be \$40, which is below the \$50 reporting threshold. However, if the charitable portion of a \$100 ticket is \$30, the ticket then costs \$70 and the \$20 overage must be reimbursed.

In the case of seminars or training institutes offered by the League of Cities or similar organizations, these events are not considered to be gifts and the cost of the event is immaterial. Town Attorney Trevarthen noted that because there is no County definition of gifts, Broward County officials are subject to State definitions and ethics opinions. She recommended that the Commissioners request an opinion on invitations or offers due to the complexity of this issue.

State law provides exceptions to gifts given to an individual outside his official capacity, such as gifts for service to a board, for professional activities, and from family members. There is not, however, an exception for gifts given to an individual by his or her friends, which must therefore be reported. If an individual's activity in an organization predated his or her election, the Broward Ethics Code does not apply.

Town Attorney Trevarthen noted that opinions have been issued regarding gifts or benefits made available to the general public, such as a new business offering a free item to all attendees at an event. If a Commissioner attends this event, s/he is then allowed the same benefit as any member of the public; however, s/he may not be singled out for additional benefit. Mr. Meyers noted that many ethics codes include a *de minimis* exception for this type of benefit.

Regarding concurrent employment, such as an elected official selling real estate within the town over which he presides, there is no conflict on earning commissions for the sale of these properties; however, there may be individual voting conflicts that the official must resolve, and income made as a result of sales must be reported. The Broward Ethics Code does not address the possibility of misuse of an official position, although State law applies. Town Attorney Trevarthen observed that opinions have been issued regarding the use of business cards identifying elected officials as such, as these cards may not be used for an individual's private benefit. An official is allowed to include his elected position in an official biography or profile.

d. Highlights of Chapter 112, Florida Statute

Mr. Meyer addressed voting conflicts, which are also covered by State law but not mentioned in the Broward Code of Ethics. A new State provision allows an individual to abstain if s/he has a bias in a quasi-judicial proceeding. Prior to July 2014, abstention was only allowed if an actual conflict or the appearance of a conflict exists. The Florida Commission on Ethics enforces Chapter 112, which is a provision of Florida Statute 286 related to open meetings. Mr. Meyer advised that an individual seeking this abstention must be able to allege a specific bias. Town Attorney Trevarthen further clarified that the issue of bias affects only quasi-judicial proceedings and does not apply to policy, such as a Code amendment or legislative decision.

If an individual does not feel that s/he has a bias and chooses to participate in quasi-judicial proceedings, it is not likely that the Florida Commission on Ethics would entertain a complaint; however, the entity affected by the quasi-judicial hearing's outcome may go to court and ask that the decision be set aside. It is also unclear under existing ethics rules as to whether an official is required by law to state his or her bias on the record.

e. Role of Florida Commission on Ethics

Mr. Meyers returned to the issue of voting conflicts, explaining that in 2013 the Florida Legislature clarified the term "special benefit" to specifically refer to an economic gain or loss. Other types of benefits do not constitute a voting conflict. The State also addressed the possibility of an elected official benefiting from a decision along with other beneficiaries, such as residents of a town or community. He characterized this as dependent upon the size of the class affected: if an official is one of 100 affected people or fewer, a conflict exists, while if the class affected is over 100 people, no conflict is seen to exist.

If an official has a voting conflict, s/he must announce it prior to participating in any discussion. The official may then participate in the discussion, but must abstain from voting and file a voting conflict form within 15 days of the vote. Mr. Meyers advised that if the issue in which there is a conflict comes before an elected body again, an official should announce his or her conflict again as well.

Mr. Meyers continued that misuse of official position is the most common complaint brought forward under the State ethics law. He briefly addressed additional issues, including unauthorized compensation to an official or his/her spouse or minor children, conflicting employment, and financial disclosure, which must be filed by July 1 for the preceding year. He noted that elected officials who file this disclosure early are allowed to amend their forms by September 1, and any minor errors will be dismissed. An attorney or accountant who files this form on an official's behalf can also be challenged.

Mr. Meyers noted that elected officials are required under State law to fulfill four hours of ethics training. Beginning on July 1, 2016, officials must certify that this training has been completed. The Broward Ethics Code requires eight hours of training. Town Attorney Trevarthen advised that at least four hours of this training must focus on State ethics requirements.

He concluded that the Florida Commission on Ethics is the State agency charged with interpreting and enforcing Chapter 112, Part 3 of the Florida Statutes. This Commission may accept referrals from law enforcement agencies or the Governor on a limited basis. Proceedings by this agency are confidential until a complaint is dismissed or probable cause is determined, although there is no way to prevent an individual who files a complaint from contacting the press. If an elected official provides an opinion from a local government attorney to whom all material facts have been disclosed, the Commission on

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Ethics typically does not find probable cause. Town Attorney Trevarthen clarified that safe harbor opinions only provide immunity under the Broward Ethics Code, but do not provide the same immunity under State law.

3. ADJOURNMENT

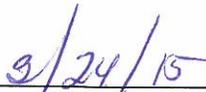
With no further business at this time, the workshop was adjourned at 6:42 p.m.



Mayor Scot Sasser

ATTEST:


Town Clerk Tedra Smith



Date