

**LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL WORKSHOP
Jarvis Hall
4505 Ocean Drive
Tuesday, February 25, 2014
5:00 P.M.**

1. CALL TO ORDER – ETHICS TRAINING FOR THE COMMISSION – TOWN ATTORNEY

Town Attorney Susan L. Trevarthen called the meeting to order at 5 p.m. Also present were Mayor Roseann Minnet, Vice Mayor Scot Sasser, Commissioner Mark Brown, Commissioner Stuart Dodd, and Commissioner Chris Vincent.

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

2. DISCUSSION ITEM

a. Broward OIG Proposal

Mr. Meyers advised that the Broward Office of the Inspector General (OIG) has proposed to create a County-wide Ethics Officer and Ethics Review Panel. The primary purpose of these entities will be to review and accept the Inspector General's annual report and comment on the Inspector General's performance. The Ethics Officer and Review Panel will be subject to judicial review if necessary.

The Ethics Officer is asked to provide timely advisory opinions, conduct ethics training, create forms for disclosures, and maintain a database of advisory opinions and disclosures. The Officer will also adjudicate complaints brought by the OIG, which will conduct investigations and send its findings to the Ethics Officer. Mr. Meyers noted that the OIG may make a probable cause determination if he feels the Broward County Ethics Ordinance has been violated. Once probable cause has been found, all proceedings become public: there is no contested hearing at the County level at which an individual or entity has the opportunity to refute the finding.

The Ethics Review Panel serves as an appellate body, hearing advisory opinions only upon appeal. The OIG recommends that the Ethics Review Panel make recommendations regarding structural and substantive changes to the Ethics Ordinance itself.

Mr. Meyers noted that although probable cause findings are subject to appeal, the appeal process only begins once the finding has become public. Investigation occurs upon the filing of a complaint or "the showing of good cause" by the OIG, which is not

strictly defined. There have been no ethics enforcement actions taken at the County level thus far. He noted that if the County Commission reviews the Ethics Ordinance, provisions may be added such as sections on voting conflicts, releasing confidential information, or other aspects.

He continued that the OIG feels the creation of an Ethics Officer and Ethics Review Panel is necessary due to the terms included in the current Ethics Ordinance, which could be considered vague, and the need for consistent application of the Ordinance. The Ethics Commission responsible for creating the Ordinance did not define certain terms, such as remuneration. The Ethics Officer could clarify these terms.

Mr. Meyers noted that another reason given for the creation of ethics review entities is protective ethics guidance, which means municipal attorneys who issue opinions could be providing opinions that their elected officials want to hear rather than focusing on the law. He pointed out that there has been no reason for this concern thus far. The Ethics Review Panel would also compile a library of opinions, although most of these in Broward County have been implementation opinions. Safe harbor opinions must be sought separately.

b. Response from Broward League of Cities / Ethics Task Force to the OIG Proposal

Mr. Meyers continued that the Broward League of Cities has its own Ethics Task Force, which has been asked to provide a response to the OIG's proposal. The Task Force may also wish to comment and offer suggestions on the Ethics Ordinance itself. The Task Force will then make a recommendation to the Board of Directors of the Broward League of Cities. Town Attorney Trevarthen stated that she would provide a report to the Town on further developments as they occur.

Mr. Meyers added that while municipal officials may continue to seek safe harbor opinions from their city or County attorneys, these opinions would not be considered binding unless they were issued by the Ethics Officer. It is possible that the Officer would defer to the city or town attorney's opinion.

Town Attorney Trevarthen advised that there are four cities within Broward County with active Charter amendments that purport to exempt these cities from certain aspects of the OIG's proposal, including reporting of remuneration and of charitable fundraising. The Inspector General recommends that there be an Amendment to the Broward County Charter, stating that the proposal prevails over any inconsistent municipal Charter. The Town Commission has decided against proceeding with any Charter amendment of its own.

Mr. Meyers noted that investigative authority would remain with the OIG, which operates on a budget of roughly \$2 million, most of which is spent on auditors and investigators

looking into possible fraud, waste, and/or abuse. The proposal to appoint an Ethics Officer and Ethics Review Panel to collect and analyze opinions resulted from criticism that the OIG provided a lack of ethics oversight.

It was noted that at the County level, individuals who file complaints that are determined to be groundless may do so without penalty, while at the State level, groundless complaints can result in prosecution of the complainant. Disclosure of information during the preliminary stages of a complaint may also result in a penalty. Mr. Meyers pointed out, however, that if a complaint is dismissed for lack of legal sufficiency, this does not necessarily mean it is frivolous or groundless.

c. Significant Safe Harbor Opinions Issued 2013-14

Mr. Meyers observed that the Broward County Ethics Ordinance does not address solicitation of gifts for a public purpose, which means attorneys offering opinions on this topic must rely on State law. He explained that elected officials are allowed to solicit gifts if a public purpose exists, such as a generic benefit to the community they serve. Gifts may not be solicited for a private purpose. There is no exemption for government contractors, which include any governmental entity with which the municipality has an interlocal agreement. He cited the Broward Sheriff's Office as an example of a contractor, noting that gifts made to the public at large do not require an opinion.

He continued that another common question refers to events, such as a League of Cities conference, for which a municipality pays for an individual's attendance and registration, but may include additional separate events not included in the registration fee. In this case, the individual may decline to attend, or may determine the value of the event and reimburse the municipality for his/her attendance.

Mr. Meyers clarified that gifts may not be accepted from vendors, contractors, or potential vendors. He added that Broward County organizations are typically not considered to be independent from the Town's agreement with the County, which would mean officials may not accept gifts from organizations such as the County Library or the Broward Sheriff's Office.

In the case of events in which the municipality is a co-sponsor, individuals attending in their official capacity are not considered to have received a gift if they accept tickets. If they bring a family member or significant other to the event, however, tickets would be seen as gifts and the individual is subject to the \$50 limit, which means he or she must either decline or pay the cost difference. Tickets distributed to the community for a public purpose are not considered gifts.

Gifts from private employers, such as trips or bonuses, are not gifts and are not required to be reported. This also applies to boards on which an individual may serve. Mr. Meyers noted that even if a private employer does business with the individual's

municipality, these are not viewed as gifts, as the individual is doing work for that private employer. He added that officials have 90 days in which to reimburse an entity if reimbursement is required. Town Attorney Trevarthen recommended requesting receipts for payment. Honorary membership in a service organization is another exemption.

In the case of relatives who do business with an individual's municipality, Mr. Meyers pointed out that while this may be allowed under law, it can give the appearance of impropriety. If an individual actively campaigns or raises funds on behalf of another candidate, that individual is subject to reporting requirements and must list the specific contributions given by donors. Money given to an individual to be given to a candidate must be reported separately under the Ethics Ordinance.

If an individual sits on a host committee for an organization soliciting charitable contributions, the individual must report these solicitations. In this case, each individual contributor and amount does not need to be separately reported. If funds remain in a campaign account after the end of the campaign, they may be transferred into an office account, but may only be used for legitimate expenses connected to that public office. These funds may also be returned to contributors or donated to charity.

If an elected official is asked to sit on a non-governmental board, s/he must report any compensatory pay as outside employment. If the official is not paid, this is not an issue unless the business expands into his or her municipality.

d. 2013 Amendment to Chapter 112, Statutes

Mr. Meyers explained that this Amendment was originally intended to apply to State elected officials with "no-show" jobs, which typically occurred in university or school settings. However, it applies to every elected official at the State or local level. The Amendment is a dual public employment provision requires that any State or local governmental position accepted by an elected official must be publicly advertised and must have been created without the knowledge that an official was interested. This Amendment also applies with respect to continued employment in the public sector, including promotion or advancement.

With regard to voting conflicts, State law recognizes a conflict if there is a special private gain or loss to an elected official, his/her relative(s), or a principal by whom that official is retained, among others. If an individual feels a conflict is present, s/he may abstain from voting under that circumstance; however, it is necessary that a conflict or the perception of a conflict must exist, and the official may not abstain otherwise.

The term "special private gain or loss" was not defined by the State Legislature, but was left to be defined by the Florida Commission on Ethics. The Commission determined that this must include an element of economic benefit or harm. Non-economic benefit is

not covered by this definition. Mr. Meyers clarified that even in the presence of a voting conflict, elected officials are allowed to participate in the discussion of an issue. This is also the case under the Town's Code of Ethics. If an elected official owns more than 1% of a property, s/he is typically considered to receive a special private gain or loss.

Mr. Meyers advised that if an item constituting a conflict is to be discussed at a meeting, the individual affected is required to announce his/her conflict and file a Memorandum of Voting Conflict form, even if s/he leaves the meeting during the item's discussion. He added that the Broward County Inspector General may investigate allegations and violations of the State ethics statute, and may file a complaint in order to refer violations to the State for further investigation.

The State Legislature has also created a provision whereby an official may establish a blind trust: if the individual votes on an issue involving the assets in this blind trust, there would be no conflict due to the lack of control over these assets. With regard to financial disclosure, forms must now be filed electronically with the State and may be amended if a complaint arises. The amended form will be treated as the original, and the Ethics Commission is required to dismiss the complaint if errors in the first form were found to be minimal in nature. Town Attorney Trevarthen and Mr. Meyers encouraged the Commissioners to seek guidance if necessary regarding the information that must be included on the form.

Mr. Meyers noted that complaints concerning elections must be filed within 30 days of the election. These are typically held until the election takes place, but will not be acted upon unless the complainant has personal knowledge of a violation.

e. Proposed Ethics Bills in the 2014 Legislative Session

Mr. Meyers reiterated that elected officials must complete a Memorandum of Voting Conflict form in the event of a conflict, and must ensure that the information provided is accurate and complete. A current bill proposes another option, which would allow an elected official to file a certificate of recusal instead. This would provide officials with the opportunity to recuse themselves from both discussion of and vote upon an issue. A willful disclosure provision has also been proposed, which would subject individuals who intentionally disclose information about a complaint or preliminary investigation to a civil fine.

If a complaint is made against an elected official, and that official has met with counsel, disclosed all material facts, received a written opinion or an oral opinion at a public meeting, and acted in accordance with that opinion, a proposed ethics bill would protect that official from prosecution. Another proposed bill would prohibit a political subdivision from imposing more stringent conduct standards and disclosure requirements on public officials of another subdivision.

Mr. Meyers recalled that the 2013 Amendment also states that members of the public have a right to participation at government meetings. This means a public participation element is required at all public meetings. Town Attorney Trevarthen noted that this Amendment meant some cities must include public participation before their consent agendas; however, Lauderdale-By-The-Sea is already in compliance with this Amendment due to the order of its Agendas.

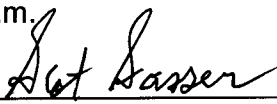
Mr. Meyers continued that procedurally, the creation of an Ethics Officer and Ethics Review Panel in Broward County would mean the OIG may investigate any violation of the State or Federal Constitution involving misconduct, gross mismanagement, fraud, waste, and abuse, violation of the County Code, or State or Federal law. The next step would then be a public hearing, at which a determination is made regarding whether or not a violation has been committed and what the penalty should be. However, it is not yet known whether or not ethics violations may continue to be resolved through settlement, as the Inspector General would be responsible for both finding probable cause and working toward prospective settlement.

Another prospective procedural issue could occur if an ethics complaint is filed against an individual at both the County and the State level, as there is no double jeopardy provision.

Mr. Meyers concluded that other than concerns regarding employees who may have engaged in misconduct, he was not aware of what patterns the Inspector General may be looking at on the municipal level. Town Attorney Trevarthen noted that one issue may be whether or not Community Redevelopment Agencies (CRAs) are handling their resources appropriately, such as whether CRAs or cities have jurisdiction over the use of funds. He noted in closing that the Code of Ethics does not have a statute of limitations.

3. ADJOURNMENT

With no further business before the Commission, the workshop was adjourned at 6:41 p.m.



Mayor Scot Sasser

ATTEST:



Deputy Town Clerk Tedra Smith

4/22/14

Date