



MEMORANDUM

TO: Mayor Sue Gunzburger; and
Board of County Commissioners for Broward County

CC: John W. Scott, Inspector General
Joni Coffey Armstrong, County Attorney
Bertha Henry, County Administrator

FROM: Lisa K. Aronson, Chair
Broward League of Cities Ethics Task Force

DATE: August 26, 2011

RE: Broward County League of Cities ("BLOC") / Office of the Inspector General's
Report on the BLOC's Proposed Code of Ethics

On August 23, 2011, the BLOC's Ethics Task Force (the "Task Force") met to formally review and consider the August 2, 2011 report (the "Report") prepared by the Office of the Inspector General ("OIG") regarding the proposed code of ethics for elected municipal officials in Broward County (the "Proposed Code"). After carefully examining the Report, the Task Force identified a number of issues that warrant some further clarification or consideration.

This memorandum is **not** intended to be a comprehensive response to the OIG's Report, rather it is only meant to bring certain specific issues to the attention of the Board of County Commissioners for Broward County (the "County Commission"). Further, the BLOC reaffirms the Proposed Code and continues to support the recommendations contained therein.

Notwithstanding any of the constructive comments set forth herein, please note that the BLOC is highly appreciative of the thorough efforts of the OIG in reviewing the Proposed Code. Throughout the OIG's review, the BLOC, its members and legal counsel sought to make themselves available to assist in any way possible to ensure that the OIG had access to all the resources and data necessary to fully evaluate the rationale behind each recommendation contained in the Proposed Code.

Additionally, please note that the BLOC's creation of the Task Force and subsequent preparation of the Proposed Code was the result of a December 16, 2010 meeting between attorneys representing several municipalities and the County Attorney's Office. Many cities were aware of several issues with the existing code of ethics governing the County Commission, and it was

suggested at this meeting that the County would be receptive to recommendations from the cities regarding a code for elected municipal officials. The Proposed Code represents the BLOC's good faith effort to address some of the more challenging provisions contained within the existing code.

The BLOC continues to welcome the opportunity to work collaboratively with the County Commission and the OIG in an effort to draft a uniform code of ethics for all elected municipal officials in Broward County.

While the Task Force may respectfully disagree with some of the points raised by the OIG in its report, there are a few particular issues which warrant some clarification or further consideration.

I. ONLINE DISCLOSURE

The Report appears to suggest multiple times that the Proposed Code removed the requirement that certain disclosure forms be filed for public inspection in an online database. The Proposed Code **did not** remove this requirement, rather the Proposed Code **amended** the language, where applicable, to require that disclosure forms be "filed for public inspection."

Page 3 of the Proposed Code defines "filed for public inspection" as follows:

Filed with a municipality's chief administrative official or city clerk **and in an online database** maintained on the city's website. Those municipalities without the capacity to maintain an online database may utilize Broward County's online database for filing pursuant to this section.

As the County Commission is aware, not all cities in Broward County have the need or capacity to maintain websites, smaller municipalities in particular. Rather than have these smaller municipalities be required to create a website for the sole purpose of filing disclosures, the BLOC recommended including a place on the County's website that could be used for such disclosures, if necessary.

Please note that the BLOC **fully supports** and appreciates the need for transparency as it relates to the filing of these disclosures in an online database for public inspection.

II. OUTSIDE/CONCURRENT EMPLOYMENT AND FINANCIAL DISCLOSURE REQUIREMENTS

The Report expressly "declines to recommend a specific policy" with regard to the ability of elected municipal officials to lobby other governmental entities in Broward County. It does, however, recommend that the Proposed Code's removal of the requirement of quarterly disclosures of outside employment be reinstated. Please note that the Report appears to contain a conflict as it relates to the **content** of such disclosures.

The relevant provision of the existing code of ethics for the County Commission, with the BLOC's proposed changes (in tracked format), is set forth, as follows:

~~County Commissioners~~ Elected municipal officials may engage in other employment consistent with their public duties and where not otherwise inconsistent with the provisions of Florida Statutes Chapter 112, Part III. ~~All~~ Outside or concurrent employment by an elected municipal official ~~County Commissioner~~, including employment pursuant to a contract, must be disclosed on a Form 1 pursuant to Ch. 112, F.S. ~~as well as any remuneration received from that employment, must be disclosed quarterly on a form provided by the County Attorney's Office. The disclosure form must be completely completed legibly and filed for public inspection, in an online database designated by the County Administrator, which database shall be searchable both in hard copy and by Internet.~~

② The Report appears to recommend that elected municipal officials be subject to this provision in the same form which currently applies to the County Commission. This would require elected municipal officials to disclose all outside/concurrent employment, as well as any remuneration received therefrom. The Proposed Code recommends that elected municipal officials comply with Ch. 112, F.S., with regards to concurrent employment and file the Form 1 disclosure accordingly.

The OIG appears to endorse this idea in his review of the "Financial Disclosure" portion of the Proposed Code. The Proposed Code recommends that elected municipal officials file the Form 1 disclosure, as required by Florida law, as opposed to the Form 6 disclosure. The Report notes that the existing code of ethics for the County Commission "**does not** require [County] Commissioners to make any additional or more burdensome disclosures, but merely comply with existing Florida law." The Report further states that "Proposed Code **properly accounts** for the fact that elected municipal officials are not currently required to file an annual disclosure on Form 6."

As previously noted, the Proposed Code simply recommends that elected municipal officials be subject to Form 1 disclosure for **both** purposes of outside/concurrent employment as well as financial disclosure as required by Florida law.

Further, as noted, there is no suggestion in the Proposed Code to negate the requirement that such disclosures be made available for public inspection in an online database.

III. EDUCATION, TRAINING AND DEVELOPMENT

As you know, the existing code of ethics for the County Commission includes certain education and training requirements. It is expected that the code which ultimately governs elected municipal officials will include similar requirements.

In anticipation of these requirements, we are pleased to share with the County Commission that the BLOC is currently coordinating with the John Scott Dailey Institute of Government at Florida Atlantic University and the Florida League of Cities to provide the necessary education, training and development likely required in the eventual ethics code to be adopted by the County Commission.

IV. ETHICS COMMISSION / ADVISORY OPINIONS

The BLOC recognizes and agrees with the OIG's concerns regarding the recommendations in the Proposed Code which pertain to an Ethics Commission and the issuance of advisory opinions. Nevertheless, the BLOC strongly supports the need for the establishment of some entity which has the legal authority to issue advisory opinions related to the code of ethics. An amendment to the County Charter would be necessary in order for such opinions to be binding on the OIG. D

Another option to consider would be the creation of a Broward County Ethics Commission based on the model utilized by the Florida Legislature through its establishment of the Florida Ethics Commission ("FEC") pursuant to Ch. 112, F.S. As you know the nine-member FEC has the legal authority to issue binding ethics opinions as well as hear cases and determine whether violations of Ch. 112, F.S., have occurred.

The County Charter currently provides that hearing officers shall make the ultimate determination as to whether a violation has occurred. As noted, an amendment to the County Charter would be necessary to transition to a system similar to the FEC model. D

Please note that the BLOC is highly sensitive to the additional cost and expense that will result from the creation of a Broward County Ethics Commission. Nevertheless, the importance of such an entity cannot be understated. Regardless of the type of system that is ultimately implemented, the BLOC firmly believes that it is in the best interest of all affected parties to have some dedicated resource with the legal authority to issue advisory opinions.

V. CONCLUSION

As previously noted, this memorandum is intended to offer some constructive comments as a follow-up to the OIG's Report. It is **not** intended to be a comprehensive response.

The BLOC looks forward to continuing to work with the County Commission in its ongoing efforts to establish a code of ethics for all elected municipal officials in Broward County. Please contact us if there is any additional information that we can provide.