

INQ 01-26

**COMMISSION ON
ETHICS AND PUBLIC
TRUST**

Memo

To: File
From: Robert
Date: 08/02/01
Re: Zack request for opinion

I received a request for opinion from Steve Zack, Esq. on July 27, 2001 and he needed a response by August 1, 2001. The facts asserted are as follows: Mr. Zack's client, Walbridge Contracting, is in a contractual dispute with the Public Health Trust. Mr. Zack's partner, Michael Kosnitzky, sits on the Board of Trustees of the Public Health Trust. Mr. Zack wanted to know whether a conflict of interest was created if he participated in the settlement conference between his client and the PHT.

I advised Mr. Zack, after consultation with Ardyth Walker, that he could attend and participate in the settlement discussions because his client has not taken a position adverse to the PHT -- this settlement conference is a presuit conference. Secondly, I advised Mr. Zack that if the matter settles and is brought before the PHT for ratification, Mr. Kosnitzky must absent himself from the meeting when this item is presented. Moreover, Mr. Zack may not appear at the PHT meeting on behalf of his client. Finally, I advised Mr. Zack that in the event the matter does not settle and Walbridge wishes to file suit against the PHT, a non-waivable conflict would exist which would require Mr. Kosnitzky to resign from the Board. In the alternative, Mr. Zack could withdraw from representing the client and Mr. Kosnitzky could continue to serve on the Board.

Mr. Zack indicated he might seek an opinion from the Ethics Commission if the matter does not settle and his firm is retained as outside counsel to pursue the contract claim against the PHT.

BANK OF AMERICA TOWER
100 SOUTHEAST 2ND STREET
SUITE 2800
MIAMI, FLORIDA 33131-2144

TELEPHONE (305) 539-8400
FACSIMILE (305) 539-1307
E MAIL INFO@ZACKLAW.COM

REPLY TO: MIAMI OFFICE

ZACK
KOSNITZKY
PROFESSIONAL ASSOCIATION

WINDMILL PROFESSIONAL CAMPUS
17190 ARVIDA PARKWAY
SUITE 2
WESTON, FLORIDA 33326

TELEPHONE (954) 659-8699
FACSIMILE (954) 659-8697

July 27, 2001

Via Facsimile and U. S. Mail

Mr. Robert Meyers
Executive Director
Miami Dade Commission on Ethics
19 West Flagler Street, Suite 220
Miami, Florida 33130

01 JUL 30 AM 8:46
COMMISSION ON ETHICS
AND PUBLIC TRUST

Re: Ethics Opinion/Zack Kosnitzky, P.A.

Dear Mr. Meyers:

By way of this letter, I hereby request an opinion regarding whether a conflict exists that may not be waived. The following are the pertinent facts:

My client, Walbridge Contracting Inc., ("Walbridge") entered into a construction contract with the Public Health Trust ("PHT") to build certain buildings on the Jackson Memorial Hospital property. Walbridge performed under the contract and now a dispute has arisen between it and the PHT regarding payment of certain claims with respect to the work that was performed.

Currently, a settlement conference is scheduled to take place between Walbridge and the PHT on August 1, 2001. Should this matter settle at that time, the attorneys for the PHT will take the matter before the PHT board for approval. If the matter does not settle, Walbridge will file suit against the PHT. In neither event will this firm appear before the PHT.

I have been advised by Miami-Dade County's attorney, Jack Hartog that he believes a "non-waivable" conflict exists. Mr. Hartog claims that this conflict arises due to the fact that I have been copied on letters from Walbridge's in-house counsel.

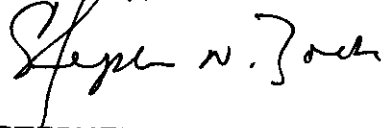
Mr. Robert Meyers
July 27, 2001
Page 2

Michael Kosnitzky is a minority shareholder of the firm (as am I) who sits on the board of the PHT. He, will not attend, or in any way be involved in any aspect of this case including the settlement conference. Mr. Kosnitzky is a transactional attorney that has never met anyone from Walbridge, and has no knowledge of the facts of this case. Mr. Kosnitzky will at no time be involved in this case.

Please advise this firm whether an ethical conflict exists simply by being copied on letters between attorneys for the PHT and Walbridge's in-house counsel. I will not be appearing before the PHT Board on behalf of Walbridge in this matter, since this case will be settled or suit will be filed. All communications with the board in either case will be by Mr. Hartog not the undersigned. Additionally, in the future, I will no longer be copied on correspondence between the PHT and Walbridge. Finally, Mr. Kosnitzky will abstain from voting or partaking in any hearings related to approval of the settlement.

Please provide me with an advisory opinion as to whether an ethical conflict exists in this matter. Your immediate attention to this matter will be appreciated since we await your response before attending the settlement conference on August 1, 2001.

Sincerely,



STEPHEN N. ZACK

SNZ:mm