

Commission on Ethics & Public Trust

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Robert A. Meyers

September 1, 1998

Armand Gonzalez, NHA, MSW

Administrator

Human Resources Health Center

2500 N.W. 22nd Avenue

Miami, Florida 33142

Re: Conflict of Interest Opinion (RQO 98-06)

Dear Mr. Gonzalez:

The Commission on Ethics and Public Trust is in receipt of your letter dated August 5, 1998, in which you request a Conflict of Interest Opinion. The Commission on Ethics considered your request on September 1, 1998 and rendered an opinion based on the following facts as stated in your letter: the Director of Nursing at the Human Resources Health Center, Michael Damon, owns and operates J & M Medical Consultants; J & M provides a service to your facility, namely, updating all individualized Nursing Assistant Flow Sheets on a monthly basis, the company has provided this service since 1992 and the approximate value of the contract is \$11,800 yearly. You state that this matter was initially addressed by the County Attorney's Office in 1992 and apparently no written opinion was prepared. However, you indicated to me that verbally you were advised by the County Attorney's Office that this situation did not create a conflict of interest to the Center or Mr. Damon.

To answer the questions you have posed, it is necessary to examine section 2-11.1(d) of the Dade County Conflict of Interest and Code of Ethics Ordinance. This subsection prohibits a person included in the terms of the ordinance to enter into any contract or transact any business through a firm, corporation, partnership or business entity in which the person or any member of his or her immediate family has a controlling financial interest, direct or indirect, with Dade County or any person or agency acting for Dade County.

In an analogous case, the County Attorney's Office on March 11, 1994 issued an opinion stating that it would be a conflict of interest for a staff nurse with the Public Health Trust to provide paper products to the Public Health Trust as this amounted to transacting business in violation of 2-11.1(d) of the Code. This section was interpreted to mean that an employee with a 100% ownership interest in a company was prohibited from contracting with the Public Health Trust.

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As the owner and operator of J & M Medical Consultants and as the Director of Nursing for the Human Resources Health Center, a facility of the Public Health Trust, Mr. Damon appears to have a conflict of interest prohibited by 2-11.1(d). Mr. Damon is the owner and operator of a firm or business entity and is transacting business with the Public Health Trust as evidenced by the contracts between J & M and the Public Health Trust. The fact that the service that J & M provides is quite unique and necessary is not dispositive of the issue. The possibility remains that a waiver could be granted by a two-thirds vote of the Board of County Commissioners. (See extension of waiver provision in section 2-11.1(c)(3) and (4).

Thus, without a waiver from the Board of County Commissioners, the opinion of the Ethics Commission is that the contract is in violation of 2-11.1(d) and can be rendered voidable. Any future contract entered into between your facility and J & M Medical Consultants would be prohibited as well unless Mr. Damon sufficiently divested himself from the firm.

Please contact me if you have any questions. I can be reached at (305) 579-2594.

I have enclosed a copy of the relevant sections of the Code for your convenience.

Sincerely,



Robert Meyers
Executive Director

Enc.