

**Commission
on Ethics
&
Public Trust**

Commissioners

Hon. Michael Salmon
Chairperson
Kerry E. Rosenthal, Esquire
Vice-Chairperson
Professor Charles A. Hall
Knovack Gramby Jones, Esquire
Professor Elizabeth Iglesias

Executive Director

Robert A. Meyers

98-07

October 7, 1998

Andre L. Williams, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
701 Brickell Avenue
Suite 1900
Miami, FL 33131

**Re: Conflict of Interest Opinion (RQO 98-07)
Technical Correction to Opinion**

Dear Mr. Williams:

The Commission on Ethics and Public Trust is in receipt of your correspondence dated July 30, 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: you are an Attorney with the law firm of Ruden, McClosky, Smith, Schuster & Russell, P.A. working in the Corporate Department; you qualified for a Community Council position representing District Three and you have no opposition in the upcoming general election; your law firm has a Land Use and Zoning/Governmental Affairs Department representing the firm's clients before various Community Councils; you have reason to believe that your law firm may appear on behalf of its clients before the Community Council on which you will be sitting. Moreover, you state that you serve on the Board of Trustees of Mt. Herman A.M.E. Church which has recently purchased property in District Three and the church will likely attempt to rezone at some point in the near future.

As a member of a Community Council, you meet the definition of "community council member" for purposes of the Miami-Dade County Code. Section 20-45 of the Miami-Dade County Code strictly prohibits a Community Council member from voting or participating in any way in any matter if the Community Council member "would or might, directly or indirectly, profit or be enhanced by the action of the Community Council." This section of the Code enumerates those relationships that would create a conflict of interest and accordingly bar a Community Council member's right to vote or participate in a given matter. Accordingly, the Commission on Ethics opines that your status as a Community Council member and as an employee of a law firm which may appear before your Community Council would create a conflict of interest in the event you discuss, participate or vote on the item presented by your law firm on behalf of one of the firm's clients. Although the Ethics Commission recognizes that you are not an employee of the entity that would be commencing the appeal before the Council, your relationship with the entity's agent (your law firm) is such that you might directly or indirectly profit or be enhanced by the action of the Council. The ordinance is devoid of language that would

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preclude your law firm from appearing before your Community Council; however, you must absent yourself from these proceedings.

It would be inappropriate for you to assist your law firm in the preparation of a matter knowing that such matter will appear or will likely appear before your Community Council at a later date. If your participation in the affairs of the client was unrelated to the proceeding before the Community Council, then such work on your part would not create a conflict of interest.

Communications between you and other council members is covered by the Sunshine Law. Inasmuch as this state statute should govern your behavior, the Commission wishes to refer you to F.S. 286.011.

Subsection 2-11.1(m)(1) of the County's Conflict of Interest and Code of Ethics Ordinances prohibits County Commissioners and other personnel from appearing before a County board or agency in a representative capacity. There is no specific reference to community council members in this subsection and without more information from you concerning the type of representation that you are contemplating, the Ethics Commission is unable to give an opinion on this subject.

The issues surrounding your activities with your church and your duties as a Community Council member seem equally problematic. As a member of the Board of Trustees you are vested with the management of the affairs of the church. By serving as one of the directors of church with a fiduciary relationship to others on the board and the church itself, you occupy a position covered by section 20-45. Under these circumstances, you would not be allowed to vote on or participate in any way concerning the rezoning matter that will likely appear before your Community Council. Once again, the concern is that you might directly or indirectly benefit, profit or be enhanced by the action of the Community Council.

Regarding your work with the church related to a matter that will be presented to the Community Council on which you sit, a conflict of interest would most likely occur even if you were to recuse yourself from a vote on such a matter. It is not entirely clear from your letter if you would participate in the debate at the public hearing and then absent yourself from the vote, or whether you intend to completely remove yourself from the process once the agenda item is presented for discussion. In either scenario, unless your participation is extremely limited, you would run afoul of section 20-45.

Finally, the Ethics Commission would caution you once again that any discussions you have with other Community Council members about the church's rezoning proposal would have to strictly adhere to the requirements of the Sunshine Law. Given the legislative mandate of the Ethics Commission, it would be improper for the Commission to interpret this state statute. Therefore, the Commission is unable to provide you with an opinion on this matter.

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I have enclosed a copy of the relevant sections of the Code and excerpts from the Government-in-the-Sunshine manual (1998 edition) for your convenience.

Sincerely,



Robert Meyers
Executive Director

Enc.