



September 10, 1999

ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairperson
Charles A. Hall, Vice Chairperson
Elizabeth M. Iglesias
Knovack G. Jones
Robert H. Newman

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

CHRISTOPHER R. MAZZELLA
INSPECTOR GENERAL

ARDYTH WALKER
STAFF GENERAL COUNSEL

[REDACTED]
8603 South Dixie Highway
Miami, FL 44143

RE: RQO 99-37

Dear [REDACTED]

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 9, 1999 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the Conflict of Interest and Code of Ethics ordinance to the Housing Finance Authority. Further, you are seeking an opinion regarding your firm's participation in the origination of low-interest loans provided by the Authority for qualified persons.

The Housing Finance Authority is a semi-autonomous agency created by the County Commission pursuant to a state statute. The statute provides for the establishment of the Housing Finance Authority for the purpose of alleviating and remedying shortages of housing and capital for investment in housing in Miami-Dade County. The Housing Finance Authority has all of the powers enumerated in the state statute subject to the limitations enumerated in the ordinance. The ordinance grants the county commission the authority to alter or change the structure of the Authority including termination of the authority. The county commission must also approve all contracts, review any rules relating to the eligibility of persons to be assisted by the program and approve the sale of any bonds.

Your firm, First-Rate Mortgage Corporation, participates in the single-family bond issues with other lenders. Your firm's participation is limited to the special pool just for small lenders. Furthermore, the participating lenders are not chosen by the Authority but by the Master Servicer. You have not voted on single-family bond issues that have come before the Authority since the Board adopted the internal code.

The Commission found that the members of the Housing Finance Authority are bound by the Conflict of Interest and Code of Ethics ordinance as well as the conflict of interest provisions of the enabling statute. Section 2-11.1(a) of the Conflict of Interest and Code of Ethics ordinance provides that it " shall constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel employees of municipalities. Section (b) (2) defines autonomous personnel as the members of semi-autonomous authorities, boards and agencies as are entrusted with the day to day policy setting, operation and management of certain defined County functions or areas of responsibility, even though the ultimate responsibility for such functions or areas rests with the Board of County Commissioners.

The Housing Finance Authority is a semi-autonomous authority as defined under the ordinance because ultimate decision-making regarding major actions such as the issuance of bonds, resolutions regarding eligibility and contracts remain with the Board of County Commissioners. Further, the County Commission retains the ability to alter, change and terminate the authority. Therefore, the Conflict of Interest and Code of Ethics ordinance governs the members of the board. Further, the members are governed by the conflict of interest provision in the state

statute pertaining to members of Housing Finance Authorities.

As to the second question regarding your firm's involvement in the single-family bond issue, the Conflict of Interest and Code of Ethics ordinance prohibits members of semi-autonomous boards from contracting with the county to provide services. Section 2-11.1(d) provides that "no person defined in subsection (b) (1) through (b) (6) and in subsection (b) (9) shall enter into a contract or transact any business through a firm, corporation, partnership or business entity in which he or a member of his immediate family has a controlling financial interest, direct or indirect with Dade County or any person or agency acting for Dade County and any such contract, agreement or business engagements entered in violation of this subsection shall render the transaction voidable. " Your firm must execute a contract with the Housing Finance Authority to participate in the loan program. Therefore, you may not serve as a loan originator under the first time homebuyer program.

If you have any questions regarding the opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 579-2653.

SINCERELY YOURS,



ROBERT MEYERS
Executive Director