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ARDYTH WALKER
STAFF GENERAL COUNSEL

April 5, 2001

Thomas v. Eagen
Steel, Hector and Davis
200 South Biscayne Boulevard
Miami, FL 33131

RE: REQUEST FOR ADVISORY OPINION 00-182

Dear Mr. Eagen:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 4, 2001 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your any conflict between a firm employee's service on the Performing Arts Center Trust and the firm's ability to represent a client in resolving legal matters involving the Performing Arts Center.

In your letter, you advised the Commission that the trust member's firm has been requested to provide legal representation to a firm providing architectural and design services to the Performing Arts Center. The architectural firm is involved in a contract dispute with the county regarding the Performing Arts Center. The law firm will represent the architectural firm in negotiations to resolve the dispute. Prior to the trust member's employment with to the firm, he represented PACT in the original negotiations between PACT and the potential client. The board member will not participate in the legal representation and the firm will erect a Chinese Wall between the member and any legal team. The Board of County

Commissioners has final authority over any settlement or agreement.

The Performing Arts Center Trust is a county board whose purpose is to oversee the planning, design, construction and operation of a performing arts center in Miami-Dade County. The Performing Arts Center staff makes reports regarding the project to PACT and the PACT Executive Director is consulted on most major decisions. The Performing Arts Center staff are county employees and report to the County Manager.

The Commission found the Conflict of Interest and Code of Ethics ordinance does not prohibit the law firm of a trust member from representing a third party in negotiations with the County regarding the Performing Arts Center. However, the trust member may not vote on any matters regarding the client because the representation will impair his independent judgment in any matter involving the client.

Section 2-11.1(m) (2) provides that "No person included in the terms defined in subsections (b) (2), (3) and (4) {autonomous personnel, quasi-judicial personnel and advisory personnel} shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit sought by a third person. Nor shall such person receive compensation, directly or indirectly or in any form for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which the person serves through the suit in question.

Section 2-11.1(m) (2) does not prohibit the law firm from representing a client regarding trust issues. The ordinance does not preclude

representation unless the representation involves appearances before the board. Since these negotiations will take place between the Performing Arts Center professional staff and county officials, the representation should not involve the Performing Arts Center staff. Therefore, the representation would be permissible as long as the Chinese Wall prohibits disclosure of confidential information.

However, the Code explicitly prohibits the firm from appearing before the Performing Arts Center Trust regarding these issues. Section 2-11.1(m) (2) prohibits appearances by the board member or an associate before the Performing Arts Center Trust even if the board member does not benefit financially, directly or indirectly, from the transaction. Section 2-11.1(m) (2) prohibits both appearances and any financial benefit, direct or indirect for a board member regarding any benefit sought by the third party by the board. Accordingly, as long as the board member is associated with the firm, the firm may not appear before the Performing Arts Center Trust regarding the negotiations.

Therefore, the Conflict of Interest and Code of Ethics ordinance permits the trust member's law firm to represent the client in negotiations with the Performing Arts Center staff and county officials. However, the law firm may not appear before the Performing Arts Center Trust and the trust member may not vote on any issues related to the representation.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 579-2653 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director