

conflict because a waiver must be granted prior to award of the contract and may not be used to ratify an existing contract. Therefore, the Conflict of Interest and Code of Ethics ordinance bars the current contract.

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 line extending to the right.

ROBERT MEYERS
Executive Director

Notwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee...from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, 2) the employee has not participated in determining the subject contract awards or awarding the contract , and 3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance."

Further, pursuant to 2-11.1(c), all employees seeking to contract with the county are required to seek an advisory opinion from the Ethics Commission prior to contracting to provide services. If the Ethics Commission determines that a conflict exists, the employee may appeal to the Public Health Trust under the provisions of 25A-3 and the Public Health Trust Conflict of Interest policy and seek a waiver prior to entering into the contract.

The current contract between AAC and the Public Health Trust is prohibited by Section 2-11.1(d). Pino may not contract with the Public Health Trust to provide services since his wife is a Trust employee and he owns a controlling financial interest in the corporation. Moreover, Pino was required to obtain an opinion from the Ethics Commission prior to responding to the request for proposal and to include a copy of the request with AAC's response. Finally, the Public Health Trust may not waive the current

corporation officially changed leadership and Bernard Pino was designated President of AAC. The company was awarded a contract to provide nurses in the summer of 2000.

The Commission found the Conflict of Interest and Code of Ethics ordinance prohibits AAC from continuing their current contract to provide nurses. The Conflict of Interest and Code of Ethics ordinance applies to employees and officials of the Public Health Trust. Section 25A-3(c) of the Code of Miami-Dade County provides that "(w)henever in the Conflict of Interest ordinance reference is made to Dade County, that reference shall be deemed and construed to be a reference to the Public Health Trust; whenever in the Conflict of Interest ordinance reference is made to the Board of County Commissioners that reference shall be deemed and construed to be a reference to the Board of Trustees of the Public Health Trust and whenever in the Conflict of Interest ordinance reference is made to the Commissioners of the Board of County Commissioners, that reference shall be deemed to be a reference to the voting members of the Board of Trustees of the Public Health Trust."

In 1998, when AAC originally provided nurses to the Public Health Trust, Section 2-11.1(d) of the Code of Miami-Dade County prohibited employees from contracting with the County to provide services. The Public Health Trust could waive the conflict if the waiver conditions contained in section 2-11.1(c) were met.

Currently, Section 2-11.1(d) prohibits employees from contracting to provide services through a firm in which they or an immediate family member have a controlling financial interest. Although Section 2-11.1(c) permits employees to contract with the county, they may not contract with their own department. Section 2-11.1(c) provides that Section 2-11.1 (c) provides that "



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STAFF GENERAL COUNSEL

April 5, 2001

David Tucker
Tucker & Kotler
2600 Douglas Road
Suite 1008
Miami, Fl 33134

RE: REQUEST FOR ADVISORY OPINION 01-09

Dear Mr. Tucker:

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 following complaint proceedings regarding your client's ability to contract with the Public Health Trust to provide nurses.

Maria Garcia-Otero is a Certified Registered Nurse Anesthetist (CRNA) in the Department of Anesthesiology of the Public Health Trust. During the past several years, Otero has worked free-lance for other hospitals as an independent contractor. In February, 1998, Maria Garcia-Otero created Absolute Anesthesia Corporation (AAC). Otero was President of the corporation and her husband served as Chief Operating Officer. In the summer of 1998, the Department of Anesthesiology sought outside staffing due to a seasonal shortage. AAC was selected to provide nurses to the hospital. In May, 2000, AAC responded to a RFP for CRNA services. At that time, AAC did disclose that the spouse of the company's president was an employee of the Public Health Trust. In July, 2000, the