



February 15, 2002

Mr. Gus Exposito  
Chairman  
Community Council #5  
7698 N.W. Miami Gardens Drive  
Miami, Florida 33015

**ETHICS COMMISSIONERS**

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ADVOCATE

**ARDYTH WALKER**  
STAFF GENERAL COUNSEL

**RE: REQUEST FOR ADVISORY OPINION RQO 02-15**

Dear Mr. Exposito:

The Commission on Ethics and Public Trust considered your request at its meeting on February 13, 2002 and rendered its opinion based on the facts in your letter.

You requested an opinion regarding doing business with contractors who have appeared before the community council.

In your letter, you advised the Commission that you are the president of a roofing company. In the past, you have refrained from working in the Community Council #5 area. You want to know if you are permitted to contract with developers after the Community Council has handled the item.

The Commission found the Conflict of Interest and Code of Ethics ordinance prohibits you from doing business on matters that have appeared before the Community Council as long as you serve on the council. Community Council members are governed by the Conflict of Interest and Code of Ethics ordinance. Community council members are specifically covered under (b) (3) (quasi-judicial personnel) which states that "the term quasi-judicial personnel shall refer to the members of the Community Zoning Appeals Boards and other boards and agencies of the County as perform quasi-judicial functions."

Section 2-11.1(j) prohibits any official covered by the Conflict of Interest and Code of Ethics ordinance from taking other employment that will impair their independence of judgment in the performance of their public duties. Section 2-11.1(j) provides that "No person included in the terms defined in subsections (b)(1) through (6) shall accept other employment which will impair his or her independence of judgment in the performance of his or her public duties."

Pursuant to Section 33-306 of the Code of Miami-Dade County, Community councils are charged with the responsibility of, *inter alia*, making decisions regarding zoning applications in their respective area including variances and special exceptions.

As a member of a Community Council charged with the responsibility of making zoning decisions, your independence of judgment in making decisions regarding zoning applications may be impaired by the possibility of financial gain if your company later receives work on projects that have come before the board or developers who seek council approval on zoning matters.

Therefore, you are prohibited from working for developers or their successors in interest who appear before Community Council #5 or on projects that have sought approval from Community Council #5.

The conflict raised in the question is not a voting conflict as delineated in 20-45. Section 20-45 prohibits voting based on relationships existing at the time of the vote. Section 20-45 provides that a community council member is prohibited from voting or participating in any way in any matter presented to the Community Council on which the member serves if the member has any of the following relationships with any of the persons or entities which would be or might

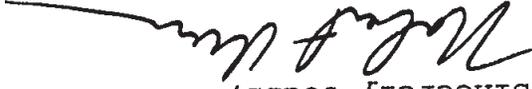
be directly or indirectly affected by any action of the Community Council on which the member serves: 1) officer, director, partner, of counsel, consultant employee, fiduciary or beneficiary; or 2) stockholder, bondholder, debtor or creditor if in any instance the transaction or matter would affect the Community Council member in a manner distinct from the manner in which it would affect the public generally. Any Community Council member who has any of the above relationships and who would be or might be enhanced by the action of the Community Council on which the member serves shall absent himself or herself from the Community Council meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. Since you would not have the prohibited relationship at the time of the vote, Section 20-45 would not prohibit you from voting.

Therefore, you are prohibited from working on projects that have appeared before Community Council #5 because the possibility of future financial gain would impair your independence of judgment.

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) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,



ROBERT MEYERS

Executive Director