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July 26, 2002

Jose Villalobos, Esq.  
The Villalobos Law Firm  
2350 Coral Way, Suite 202  
Miami, FL 33145

**RE: REQUEST FOR ADVISORY OPINION 02-70**

Dear Mr. Villalobos:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 25, 2002 and rendered its opinion based on the facts stated in your request.

As the Attorney for the City of West Miami, you requested an opinion regarding the City's acceptance of monetary donations from a citizen for specific city projects and activities.

You advised the Commission that the City of West Miami is a small city with a small budget. Within the past year, Mr. Elliot Asbel, a non-resident who owns substantial property in the city has donated money to the City to fund various activities and events. Most recently, he donated \$16,000.00 for the establishment of a youth summer camp for both residents and nonresidents. Although Mr. Asbel owns substantial property in the city, he has never been before the City Commission on any official matter.

The Commission found that under the Conflict of Interest and Code of Ethics Ordinance there is no legal conflict that prohibits the City of West Miami from accepting the monetary donations made by Mr. Asbel for specific city projects or official city business, or Mr. Asbel from offering said donations absent any finding of an actual quid pro quo. Section 2-11.1 (e), defines the term "gift" and sets forth the exceptions to the definition and other prohibitions.

Although the donations are in the form of money and are received without consideration, they are not gifts under the ordinance since the money is used for city purposes and is allocated for specific city projects. Section 2-11.1 (e) (2) (f) provides that, "The provisions....shall not apply to gifts solicited by Commissioners on behalf of the County in performance of their official duties for use solely by the County in conducting its official business."

However the City's continued acceptance of these donations may create the perception of a conflict of interest; therefore, while recognizing that private donations are relied upon to support essential government functions, the Ethics Commission recommends implementing the following guidelines to ensure that solicitation, acceptance and use of private funds are governed with the highest standard of ethics, disclosure and accountability.

- Apprise city officials, employees and potential donors of the gift rules as outlined in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance;
- Establish auditable records, subject to public inspection, that account for all donated monetary contributions for the specific city project/program;
- Produce a report, identifying all donors, dates of contribution, the specific city projects/programs to which they contributed, the amount/value/type of contribution and an accounting of how the funds were expended;
- Ensure that monies are going to the general city fund and not to elected officials;
- Consider establishing a nonprofit arm or separate community fund with citizen oversight to manage and administer the donations;
- Consult with the Ethics Commission or City Attorney regarding interpretation and clarification of these "best practices" guidelines or advice pertaining to the stewardship of the donations.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

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

ROBERT MEYERS  
Executive Director