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February 28, 2003

Earl Gallop, Esq.
Nagin Gallop Figueredo, P.A.
3225 Aviation Avenue, #301
Miami, FL 33133

RE: REQUEST FOR ADVISORY OPINION 03-06

Dear Mr. Gallop:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 27, 2003 and rendered its opinion based on the facts stated in your request.

As City Attorney for the City North Bay Village, you requested an opinion regarding any potential conflicts of interest under the Code of Ethics Ordinance as they relate to the solicitation of contributions and the acceptance of unsolicited contributions by elected officials on behalf of 501(c)(3) organizations.

In your letter to the Ethics Commission, you stated that David Fleischer, a city council member in the City of North Bay Village, is President of a nonprofit organization, The North American Zoological Foundation, which operates a camp in Tennessee for autistic children. He serves strictly in a volunteer capacity. As President, his responsibilities involve management of the camp and fundraising activities, which consist of soliciting contributions and in-kind donations for the support of the camp. Past contributors have included individuals and entities who appear before the Council of the City of North Bay Village on various land development matters or who are vendors of goods and services to the City. You requested the Ethics Commission to provide fundraising guidelines in accordance with the Code of Ethics.

The Commission found that the Conflict of Interest and Code of Ethics Ordinance does not prohibit Mr. Fleischer from engaging in fundraising efforts on behalf of the nonprofit organization and specifically the camp while serving as a City Council member. However, certain ethical and legal obligations exist by virtue of one's elective office.

You advised the Ethics Commission that some contributors currently have or foreseeably have matters that will require official action or require a legal duty to be performed by the elected official, which could create the appearance of a conflict or raise questions of impropriety. Such matters include, but are not limited to, land development permits, procurement matters or zoning applications. Section 2-11.1 (e), defines the term "gift" and sets forth the exceptions to the definition and other prohibitions. Section 2-11.1 (e) (3) states,

"A person described in subsection (b)(1) through (b)(6) shall neither solicit nor demand any gift. It is also unlawful for any person...to offer, give, or agree to give to any person included in the term defined in subsection (b)(1) through (b)(6) or for any person included in the term defined in subsection (b) (1) through (b)(6) to accept or agree to accept from another person or entity, any gift for or because of: (a) an official public action taken, or to be taken, or which could be taken; (b) a legal duty performed or to be performed, or which could be performed; or (c) a legal duty violated or to be violated, or which could be violated by any person included in the term defined in subsection (b) (1)."

Under Section 2-11.1 (d), Mr. Fleischer would be prohibited from participating in or voting on any matter presented to the City Council involving the nonprofit organization. By way of analysis, see RQO 98-14, where a Community Council member, who was also a volunteer board member of her condo association, was prohibited from voting on a matter concerning her condo due to her relationship with the association.

Additionally, Section 2-11.1 (g) provides in part, that no government official or employee shall use his or her "official position to secure special privileges or exemptions." Accordingly, Mr. Fleischer must avoid using his City letterhead and other government resources to benefit the nonprofit agency. He may not receive in any

amount or in any manner, a benefit or gain by engaging in fundraising activities.

Under the Code of Ethics, there is no legal conflict which neither prohibits Mr. Fleischer from continuing his fundraising activities nor precludes him from accepting unsolicited contributions on behalf of the nonprofit organization. The principal concern though, is whether the official's fundraising activities would create an appearance that he or she is using the elective office to pressure others to contribute, or allowing contributors special access or privileges not afforded to the general public. Therefore, the Ethics Commission establishes the following guidelines to ensure that such fundraising activities are governed with the highest degree of ethics and accountability.

- The solicitation activity shall not be targeted to only specific individuals and entities doing business with the City, seeking to do business with the city, or who have contributed to the elected official's political campaign;
- Elected officials may not coerce government employees, citizens, entities or individuals doing business or seeking to do business with the City, into contributing donations;
- In the interest of transparency and openness, when a contributor appears before the elected official requesting some official action, said elected official should disclose that fact prior to participating in the proceeding;
- Should a matter involving an elected official's nonprofit organization come before the City Council, that official should absent himself or herself from the proceeding or discussion, and may not vote on the matter;
- Elected officials may not engage in solicitation activities during official government-sponsored meetings or events;
- Elected officials may not utilize government resources, such as official letterhead, staff or other resources to further fundraising activities;
- All written correspondence or oral presentations seeking contributions on behalf of the nonprofit should be done in the role of official/member of the nonprofit, not in the role of elected government official;

- Consult with the Ethics Commission or City Attorney regarding further clarification or interpretation of these “best practices” guidelines.

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 black ink, appearing to read "Robert Meyers", with a long horizontal line extending to the right.

ROBERT MEYERS
Executive Director