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August 24, 2004

Truly Burton
Government Affairs Director, Miami-Dade County
Builders Association of South Florida
15225 NW 77 Avenue
Miami Lakes, FL 33014

RE: REQUEST FOR ADVISORY OPINION 04-148

Dear Ms. Burton:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on August 18, 2004 and rendered its opinion based on the facts stated in your request. This request, on behalf of the Builders Association of South Florida ["BASF"], arises from two previous opinions rendered by the Ethics Commission, RQO 04-33 and RQO 04-48, which identified the following nine (9) activities conducted by plan expediters that constituted lobbying:

- 1) Attempting to persuade staff that an application and plans for a permit should be expedited
- 2) Attempting to persuade staff that a non-scheduled inspection should be performed
- 3) Attempting to persuade staff to assign a specific inspector or plan reviewer to a project
- 4) Attempting to persuade staff that an expired permit or process number should be re-instated
- 5) Representing building code violators at ticket appeal hearings
- 6) Negotiating settlement agreements with department staff on unsafe structure or ticket cases
- 7) Offering to make modifications to plans so that they can be approved more expeditiously
- 8) Trying to persuade staff that a permit, plan review or inspection is not required for a project

- 9) Trying to persuade staff that a ticket should be void or an enforcement case closed

In the instant matter, BASF requested that the Ethics Commission reconsider whether some of those above-mentioned activities are lobbying as previously opined. Specifically, you indicate that while BASF agrees with the conclusion that the activities identified in numbers 5, 6, and 9 constitute lobbying, the remaining activities identified in numbers 1, 2, 3, 4, 7 and 8 do not.

According to the facts submitted in the letter, plan expeditors represent clients, who are builders, homeowners or owner's representatives, and assist them in moving building plans through the approval process until completion. BASF states that the activities identified in numbers one (1) through four (4), which include persuading staff that a permit application should be expedited, that a non-scheduled inspection should be performed, that a specific plan reviewer should be assigned to a project and that an expired permit should be re-instated are governed by specific procedures established by the Building Department. For instance, departmental policy prohibits plan expeditors to speak directly with Building Department plan reviewers to request expedited service. Such service is administered through the department's Optional Plans Review Procedure, which requires additional fees.

Furthermore, BASF states that the Building Department has additional processes and procedures established to administer matters such as, non-scheduled inspections, the assignment of specific inspectors and the expired permits. For example, regarding the assignment of inspectors or plan reviewers, BASF notes that the County has a computerized random plan distribution process so that plan expeditors cannot contact plan reviewers or request certain reviewers, and consequently, staff cannot be persuaded or 'lobbied' to assign a specific inspector to a project.

Lastly, BASF notes that these following two activities-offering to make plan modifications for expeditious approval and persuading staff that an inspection is not required [#7 and #8, respectively]- are not conducted by plan expeditors, but rather by design professionals/architects. Again, BASF states that it is

illegal for a plan expediter to make changes to plans and that the Florida Building Code and Building Department policy determine whether and what types of inspections are required; consequently, department staff cannot be "persuaded" to take one course of action over another.

Under Section 2-11.1 (s) of the Conflict of Interest and Code of Ethics Ordinance a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

As previously opined by the Ethics Commission, clearly where plan expediters are representing clients at ticket appeal hearings, negotiating unsafe structure cases and representing third parties on other enforcement matters, then said expediters are lobbying and required to register as such in accordance with the Code of Ethics. As noted in RQO 04-33, these activities are seeking some action, decision or recommendation by County staff on behalf of third parties; they are not considered within the scope of "routine administrative requests."

With regard to the activities outlined in numbers 1,2,3,4,7 and 8, BASF indicates that these activities are governed by specific departmental policies and procedures which staff must abide by and which are not subject to change by staff discretion. In other words, if a plan expediter requests expedited service, such service will be provided with a required additional fee; moreover, departmental policy prohibits plan expediters from contacting any department plan reviewer during this process.

The Ethics Commission concluded that since the Building Department has established procedures and policies which curb the authority and discretion staff may exercise with regard to the activities outlined in numbers 1,2,3,4, 7 and 8, the activities do not constitute lobbying. Evidently, these

procedures are designed to make these activities more routine and administrative in nature.

However, said plan expeditors would be lobbying if they tried to circumvent established department procedures and processes in order to persuade officials to take a course of action regarding the following activities:

- Expedited permit applications
- Performance of non-scheduled inspections
- Assignment of specific plan reviewer or inspectors to a project
- Reinstatement of expired permits
- Permit, plan review or inspection requirements
- Plan modifications

Accordingly, department officials would be prohibited from communicating with said plan expeditors until they have registered as lobbyists.

Further, communications with staff to ask only a procedural question, such as confirming receipt of plans and permit applications, inquiring about the status of the submitted plans or responding to questions or suggestions about plan designs, also would not be considered lobbying. As noted in the request, it is illegal for plan expeditors to make modifications to plans, although they may accompany design professionals during their meetings with County plan review personnel.

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,



ROBERT MEYERS
Executive Director