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December 16, 2004

Anita Gibboney  
Travel Coordinator  
Office of Strategic Business Management  
111 N.W. First Street  
Miami, FL 33128

**RE: REQUEST FOR ADVISORY OPINION 04-165**

Dear Ms. Gibboney:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on December 15, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the acceptance and use of frequent flyer miles by county employees. You are also seeking an opinion as to whether the County can reimburse consultants and job applicants for travel using frequent flyer miles.

In your letter, you advised the Commission that County employees may receive frequent flyer miles when they travel on official County business. The tickets may be purchased on a county credit card or the employee may be reimbursed for travel purchased on the employee's credit card. Frequent flyer miles are assigned to the traveler and may not be assigned by the traveler to Miami-Dade County.

Federal law permits federal employees to retain and use any frequent flyer miles acquired on official business. Due to the

difficulty of enforcement, most state and local jurisdictions do not have policies regarding the use of frequent flyer miles by employees. Pursuant to I.R.S. Announcement 2002-18, the Internal Revenue Service does not tax frequent flyer miles acquired as a result of business miles unless the benefit is converted into cash or used for other purposes.

The Commission found County employees may use frequent flyer miles acquired as a result of travel on official county business. Frequent flyer miles are considered a gift under the Conflict of Interest and Code of Ethics ordinance. Section 2-11.1(e) (1) defines a gift as "the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form without adequate and lawful consideration." The frequent flyer miles have economic value and the employee has not paid lawful and adequate consideration for the frequent flyer miles. Therefore, the frequent flyer miles are a gift. However, County employees may use the frequent flyer miles subject to the following limitations:

- 1) County employees may not convert any frequent flyer miles acquired as a result of county travel to cash or sell the frequent flyer miles to any person or entity for cash.
- 2) The employee must disclose the trip as a gift if the miles acquired as result of county travel can be segregated from miles acquired from personal use and the cash value of frequent flyer miles received in any quarter has a cash value of one hundred dollars or more.

Generally speaking, the gift section of the Conflict of Interest and Code of Ethics ordinance does not apply to county consultants and job applicants. Therefore, any reimbursement policy related to the use of frequent flyer miles by consultants and

applicants is outside the jurisdiction of the Ethics Commission.

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 the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

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

ROBERT MEYERS  
Executive Director