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May 18, 2004

Donna Romito
Miami-Dade County Building Department
11805 SW 26th Street, Room 209
Miami, FL 33175-2474

RE: REQUEST FOR ADVISORY OPINION 04-48

Dear Ms. Romito:

At its April 2004 meeting, the Commission on Ethics and Public Trust considered your request for an advisory opinion seeking further clarification of the lobbying provisions under the Conflict of Interest and Code of Ethics as they pertain to the activities of permit/plans expeditors and consultants in the Building Department.

Additionally, in that request you asked the Ethics Commission to consider whether the term "employees," as defined under Section 2-11.1 (b)(6), includes the following individuals, and therefore, would make them subject to the provisions of the Code of Ethics, in particular the "two-year" rule provided under subsection 2-11.1 (q), *Continuing application for two (2) years after County service:*

- Part-time employees
- Temporary full-time employees directly hired by the County
- Temporary full-time employees directly hired by employment agencies

You pointed out that various developers presently employ these individuals, who have worked in the Building Department within the past two years, as permit expeditors and consultants. The Ethics Commission deferred a final opinion on this particular question, subject to further

review; and accordingly, rendered its opinion on this question at its meeting on May 17, 2004.

The term "employees," is defined under Section 2-11.1 (b)(6) as "all other salaried personnel employed by the County." As you indicated, several plans/permit expeditors and consultants who are presently working for developers were employees in the Building Department within the past two years. Some of these individuals were on part-time status, or on a temporary full-time basis hired directly by the County or through an employment agency. However, you also noted that most of these former employees were employed directly by the County in a full-time capacity. Individuals working for the County in these capacities may not necessarily earn a salary per se, but rather earn hourly wages and may or may not receive County benefits.

Firstly, although some of these individuals are paid on an hourly basis, the word "salaried," does not exclude these individuals from the jurisdiction of the Code of Ethics. An opposite interpretation would create a loophole exempting these individuals, who for all intents and purposes, are working for the County and performing official County duties. Also, it would conflict with the existing broad application of the Code, especially in view of the fact that contractors and vendors are required to comply with the Code of Ethics Ordinance. In fact, in RQO 01-38, the Ethics Commission opined that a former Commission aide, who had worked in the County for only six (6) months, was nevertheless subject to the Code of Ethics, including its two-year rule restrictions.

However, understanding that individuals hired through temporary employment services [full or part-time] may not contemplate employment with the County for a long period of time, or may not be afforded an opportunity for a regular County position, the Ethics Commission exempts these individuals only from the "two-year rule" restrictions should their service to the County not exceed six (6) months; if it does exceed that time frame, the "two-year rule" would then apply. Nevertheless, these individuals still are subject to the other Code of Ethics provisions, such as the gift rules and the prohibitions on exploitation of official position, for instance, while in the service of the County.

Moreover, the term "employees" as defined in the Code of Ethics does include all individuals hired directly by the County on a part-time and full-time basis, regardless of the terms of compensation. These said individuals would be subject to the provisions of the Code of Ethics, including the "two-year rule" restrictions. Lastly, volunteers and interns, even if they receive a stipend, would not be considered "employees" for purposes of the Code of Ethics.

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", written over a horizontal line.

ROBERT MEYERS
Executive Director