

Memo

To: Silvia Unzueta
Acting Director
Office of Community and Economic Development

From: Ardyth Walker
Staff General Counsel

Date: 9/7/2005

Re: RQO 05-101 (CODEC Board of Directors)

You requested an advisory opinion regarding whether the activities of the CODEC Board of Directors violates the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance. Specifically, you inquired as to whether a recipient of grant funds may contract with an organization with which it shares a common management and board of directors for services. This opinion is based on the information provided in your request. The Ethics Commission has not reviewed this matter. Please notify me if you want a formal opinion from the Ethics Commission.

CODEC provides affordable housing to low-income elderly residents of Miami-Dade County in several locations. In 2003-04, CODEC received funding from OCED for three projects: Las Palma in Little Havana, Royal Palm Apartments in Opa-Locka and Bay View Apartments in South Dade. The grant documents provide that grantees will abide by the relevant provisions of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance.

CODEC shares management and a board of directors with the Cuban American National Council (CANC). The local headquarters of CODEC is located in the CANC building and the two organizations share certain operating costs including insurance.

The U.S. Department of Housing and Urban Development (USHUD) found that CODEC could not purchase insurance from CANC because the action violated 24 C.F.R. §570.611 which provides that a grantee "presently has no financial interest

and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this agreement". CODEC shares office space with CANC as well as other services including insurance for the organization's employees. CODEC also shares management with CNC Management Company which will assume management of three projects after construction is completed.

The Miami-Dade County Conflict of Interest and Code of Ethics ordinance does not prohibit CODEC from sharing resources with another organization with identical management as long as board members do not financially benefit from the arrangement. Section 2-11.1(n)(Actions prohibited when financial interests involved) prohibits board members from making decisions affecting a business in which he or she or any member of his immediate family has a financial interest. Immediate family is defined in the ordinance as spouse, parents and children. Similarly, Section 2-11.1(v)(Voting Conflicts-Board Members) prohibits board members from voting on matters where if the board member will be directly affected by the action of the board and board member serves as an officer, director or employee of the person or entity seeking action from the board.

CODEC's actions do not violate the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance because the officers do not personally profit or benefit as officers of CANC for any joint transactions between the two boards. Article VIII of CODEC's Articles of Incorporation provides "that no part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, officers or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of any of its purposes." The Articles of Incorporation of CANC similarly provide that directors and officers are not entitled to any financial benefit or distribution as a result of their service on the board. Therefore, CODEC board members cannot financially benefit from any decision to share resources with CANC.

Accordingly, since CODEC board members are not making decisions that inure to their financial benefit, CODEC is not in violation of Sections 2-11.1(n) and 2-11.1(v) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance.

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.

Please contact me at (305) 350-0616 or awalker@miamidade.gov if you have any further questions.

cc: Shannon Sommerset, Assistant County Attorney