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November 16, 2005

Marilyn Sutherland, R.N.
3114 Mary Street
Miami, Fl 33133

RE: REQUEST FOR ADVISORY OPINION RQO 05-125

Dear Ms. Sutherland:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on November 15, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether your organization may contract with the Youth Crime Task Force to provide services.

In your request, you advised the Commission that you have been a neurological nurse at Jackson Memorial Hospital for thirty years. You also work for the Department of Neurological Surgery at the University of Miami School of Medicine. Additionally, you serve on three state boards: the Brain and Spinal Cord Injury Advisory Council, the Safe Kids Advisory Board and the State of Florida Injury Prevention Advisory Council. You are planning on retiring from the Public Health Trust in February, 2006.

You also serve as a member of the Youth Crime Task Force. The Youth Crime Task Force was established in 1997 to address issues related to youth crime prevention and violent crimes committed by juvenile offenders. Most task force members serve in an ex-officio capacity including two County commissioners, the

Director of the Miami-Dade Police Department, Chief of the Miami Police Department and the head of the Juvenile Division of the Public Defender's Office. The task force enabling ordinance also requires the appointment of several service providers to the board.

The Youth Crime Task Force recently issued a Request for Proposals/ Request for Qualifications to community-based organizations to provide services for juvenile offenders and children who are at-risk due to exposure to violence, drug and alcohol abuse and poor academic performance. The RFQ requests proposals from organizations who can provide services in a number of areas including: 1) Family and Child Empowerment; Community Control; Juvenile Weapons Offender Programs; Family Intervention Services; Post Detention Girls' Programs; Sibling Model Programs; Programs for Children 12 and under and Program Evaluation.

You are also the Program Director of the Gate Program for Juvenile Weapons Offenders. The Gate Program is operated at Jackson Memorial Hospital and exposes offenders to the physical consequences of gun violence including injury and death. The program also teaches offenders conflict resolution skills, anger management and critical-thinking skills. In addition to juvenile offenders, the program provides services to parents, guardians and siblings.

The Ethics Commission found the Conflict of Interest ordinance permits the Gate Program to receive funding from the County. Section 2-11.1(c) permits employees to contract with the county to provide services through a non-profit organization. Section 2-11.1(c) states that " Notwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee...from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the

employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, 2) the employee has not participated in determining the subject contract awards or awarding the contract , and 3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance." Since the Gate Program is a non-profit organization, you do not have a controlling financial interest in the entity contracting with the county and the program may provide services.

Similarly, the Conflict of Interest ordinance permits you to contract with the County as an advisory board member. Section 2-11.1(c) (3) provides that "Notwithstanding any provision to the contrary herein, Subsection (c) and (d) shall not be construed to prohibit any person defined in Subsection (b) (2) (autonomous personnel); (b) (3) (quasi-judicial personnel) and (b) (4) (advisory personnel) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the board member or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County. However, any person defined in Subsection (b) (2), (b) (3) and (b) (4) is prohibited from contracting with any agency or department of Miami-Dade County subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member." Since you do not have a controlling financial interest, the Gate Program may contract to

provide services even though the contract is subject to the oversight of the Youth Crime Task Force.

However, as you are aware, Section 2-11.1(v) prohibits you from voting on funding recommendations for the Gate Program. Section 2-11.1(v) prohibits you from voting on matters before the board where the board member will be directly affected by the vote and serves as an employee of the entity seeking board action..

Further, you are prohibited from appearing before any County board or agency (including the Public Health Trust) and seeking funding for the Gate Program as long as you are an employee of the Public Health Trust. Section 2-11.1(m) (1) prohibits employees from appearing before any County board or agency and making a presentation with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form for service rendered to a third person who has applied for or is seeking some benefit from the County or a County agency in connection with the particular benefit sought by the third person.

Moreover, as long as you are a Public Health Trust employee, Section 2-11.1(m) (1) prohibits you from receiving compensation from the Gate Program from funds received from the Youth Crime Task Force. However, you may be compensated from task force funds after you retire from the Public Health Trust even if you remain a member of the Youth Crime Task Force.

Therefore, the Gate Program may contract with the County to provide services. However, you are prohibited from voting on funding recommendations or appearing before any county board or agency in connection with

funding for the program or receiving compensation from any funds received from any county agency as long as you are a Public Health Trust employee.

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

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director