

April 28, 2005

Jason Kaune
Nielsen, Merksamer, et.al.
591 Redwood Highway
Suite 4000
Mill Valley, California 94941-3039

**RE: REQUEST FOR ADVISORY OPINION RQO 05-34
Jason Kaune contingency fee**

Dear Mr. Kaune:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 27, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the contingency fee ban to lobbying agreements entered into prior to the enactment of the ordinance.

In your letter, you advised the Commission that In September 2002, Miami-Dade County advertised a Request for Proposals to provide software and integration services for the Aviation and Water and Sewer Departments. In October 2002, PeopleSoft, Oracle's predecessor in interest, entered into an agreement with a local lobbyist. The original contract was extended and expired in December, 2004. The Board of County Commissioners authorized the execution of a contract with PeopleSoft and another company on December 14, 2004.

On May 16, 2003, the County enacted a ban on contingency fees. Subsequently, in August of 2003, the Ethics Commission considered a draft administrative order to implement the 2003 changes to the lobbying ordinance. The

draft administrative order contained a rule stating that "contingency fee agreements between the parties which were entered into prior to the effective date of the legislation are not affected by the legislative change if the contingent matter was advertised prior to May 16, 2003." The administrative order was not adopted and the Ethics Commission subsequently adopted lobbying rules of procedure. The lobbying rules do not contain the draft provision and do not address the contingency fee issue.

The Commission found that a principal may pay a contingency fee to a lobbyist for any lobbying done between advertisement and award as long as the matter was advertised before the effective date of the ordinance. Section 2-11.1(s)7) provides that "No person may in whole or in part pay, give or agree to pay or give a contingency fee to another person. No person may on whole or in part, receive or agree to receive a contingency fee. As used herein contingency fee means a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat or modification of: 1) an ordinance, resolution, action or decision of the County Commission; (2) any action, decision or recommendation of the County Manager of 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 regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee. "

Since the contingency fee agreement was not banned by the ordinance when it was executed, the lobbyist may be paid on a contingency fee basis for any lobbying work prior to award of the contract for which the lobbyist was retained. However, a lobbyist may not be paid a contingency fee if the contract was

amended or extended after May 16, 2003.¹ The amended or extended contract would be considered a new agreement and subject to the ordinance in effect at the time it was executed.

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,

ROBERT MEYERS
Executive Director

cc: Eston Melton

¹ The contingency fee ban does not prohibit a principal from paying a lobbyist for actual work performed in representing the principal, so long as the compensation is in no way related to or contingent upon passage, defeat or modification of ordinances, actions of the County Commission and/or actions of County staff.