

May 5, 2005

Lester Sola
Supervisor of Elections
2700 N.W. 87th Avenue
Miami, FL 33172

**RE: REQUEST FOR ADVISORY OPINION-RQO 05-49
Lester Sola**

Dear Mr. Sola:

You requested an opinion regarding application of Section 2-11.1(x) (Prohibition on county employees and departmental personnel performing contract-related duties) to the prospective employment of a Deputy Director for Electronic Voting. The Chairperson of the Ethics Commission and I have reviewed this request. The full Ethics Commission has not considered this matter. Please advise me if you would like a formal opinion from the Ethics Commission.

In your letter, you advised me that the Elections Department has recently completed a recruitment process for a Deputy Supervisor of Elections, Electronic Voting position. The top ranked candidate for the job is Michael Johnson, Owner/ President of M. Johnson & Associates (MJ&A). M. Johnson & Associates is a subcontractor to Election Systems and Software(ES&S). ES&S is the vendor for the touchscreen voting system used by Miami-Dade County. As a subcontractor, MJ&A has provided training and technical support to the Elections Department during recent elections. If Johnson is chosen for the top position, he will dissolve M. Johnson & Associates.

As Deputy Supervisor of Elections, Electronic Voting Division, Johnson will be responsible for technical oversight and supervision of the ballot creation, tabulation and testing protocols; coordination of equipment programming and supervision of full-time and seasonal staff. Johnson will not approve work orders or invoices for ESS and will not sit as a member of an evaluation or competitive selection committee regarding ES&S. The Deputy Supervisor for Finance and Administration will handle coordination and administration of the contract.

The Conflict of Interest and Code of Ethics ordinance permits Johnson to serve as Deputy Supervisor of Elections, Electronic Voting Division. Section 2-11.1(x) provides that "(n)o person included in subsections (b) (5) (departmental personnel) and (b) (6) (employees), who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity (hereinafter "business entity") shall for a period of two years following termination of his or her prior relationship with the business entity, perform any county contract-related duties regarding the business entity or the successor in interest where the business entity is a county bidder, proposer, service provider, contractor or vendor. As used in this subsection (x), "contract-related duties" include, but are not limited to: service as a member of a county certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding any contract."

Accordingly, Johnson may serve as Deputy Supervisor if he does not perform contract related duties regarding the ES&S contract.

Specifically, Section 2-11.1(x) prohibits Johnson from performing the following contract-related duties: negotiating contractual terms and conditions including acquisition, installation and maintenance of election equipment; approving work orders or invoices and participating in decisions or recommendations involving amendments, extensions or termination of the existing contract.

However, Johnson may supervise, administer and coordinate elections systems activities; oversee successful completion of system development and modification projects within established schedules and budgeted resources (as long as the work does not involve negotiation of contractual amendments) and develop and implement procedural specifications.

Therefore, Johnson may serve as Deputy Supervisor, Electronic Voting as long as he does not participate in any of the contract related duties enumerated herein. Finally, this opinion is a general guide only and Johnson is advised to seek an advisory opinion regarding specific administration and oversight activities involving ES&S that may fall within the ambit of Section 2-11.1(x).

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, please call the undersigned at (305) 350-0616 or Robert Meyers, Executive Director at (305) 579-2594.

Sincerely Yours,

ARDYTH WALKER
Staff General Counsel