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May 18, 2007

Mitchell Bierman
Weiss, Serota, Pastoriza, Cole and Boniske,
P.A.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

RE: REQUEST FOR ADVISORY OPINION RQO 07-05

Dear Mr. Bierman:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on May 17, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding contracting and employment procedures at the MDHA Development Corporation.

The MDHA Development Corporation was created by county resolution. Under the original articles of corporation, the MDHA Development Corporation was an instrumentality of Miami-Dade County. The Articles of Incorporation were later amended and MDHA Development Corporation currently has its own Board of Directors, accounting firm and legal representation.

MDHA Development Corporation has been involved in several projects include development of Ward Towers, an assisted living facility, infill housing and joint ventures with other not-for profit corporations and economic development corporations.

In RQO 05-12, the Ethics Commission opined that the MDHA Development Corporation Chair and President could serve despite the fact that his wife was Director of the New Markets division of the Miami-Dade Housing Agency. In the opinion, the Commission stated the spouse was restricted from contracting with the Housing Agency through an entity in which he held a controlling financial interest and that he could not participate in negotiation or coordination of projects between the MDHA Development Corporation and the New Markets Division of the Miami-Dade Housing Agency.

Subsequently, the MDHA Development Corporation issued a solicitation for a co-developer for infill housing. MDHA Development Corporation received only one response. The Chair was involved in unrelated projects with the developer. Pursuant to the opinion, the Chair notified the MDHA Development Corporation of the issue and did not participate in voting or discussion regarding award of the contract.

You are seeking an opinion regarding whether the MDHA Development Corporation may properly enter into contracts where a single proposer responds to a solicitation and the proposer is involved with a board member in unrelated projects.

You are also seeking an opinion regarding whether the family members of the Executive Director may be employed by the MDHA Development Corporation and an entity with which the MDHA Development Corporation transacts business.

The Ethics Commission found the MDHA Development Corporation may enter into contracts with a developer with whom a board member is involved in unrelated projects as long as the board member does not own a controlling financial interest in the entity with whom the board is entering into the

contract. However, the board member is prohibited from taking any action regarding the entity, may not acquire a financial interest in the entity and may not disclose any confidential information to the entity.

Doing business with a related entity

The MDHA Development Corporation is only prohibited from contracting with entities where a board member owns a controlling financial interest in the corporation. Section 2-11.1(d) prohibits a covered person from contracting with the county through an entity in which he or she owns a controlling financial interest. Section 2-11.1(d) provides that "no person included in categories (b)(1) through (b)(6) shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of his immediate family has a controlling financial interest, direct or indirect, with Dade County or any person or agency acting for Dade County and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable." A controlling financial interest is defined as ten percent or more of the capital stock in the corporation. An immediate family member is spouse, parents and children.

A board member is prohibited from taking action where his or her financial interests are involved. Section 2-11.1(n) provides that no covered person "shall participate in any official action directly or indirectly affecting a business in which he or she has a financial interest." This provision of the code is broader than the voting conflict section and restricts a board member from participating in any decisions regarding an entity in which he or she has any financial interest including award, negotiation and oversight of the agreement.

A board member is also prohibited from disclosing any confidential information to the entity with which he or she has a business relationship. Section 2-11.1 (h) provides that no covered person "shall accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by him as a result of his or her official position nor shall he in fact ever disclose confidential information garnered or gained through his official position."

Finally, a board member is prohibited from acquiring a financial interest in an entity that may be affected by the board's actions. Section 2-11.1(o) provides that no covered person "shall acquire a financial interest in any project, business entity or property at a time when he or she believes or has reason to believe that the project, entity or property will be directly affected by his or her official actions."

Accordingly, the MDHA Development Corporation is permitted to enter into the contract but a board member is restricted in several sections of the code regarding his or her participation in the matter and his or her transactions with the entity.

Employment of family members

The Executive Director of the MDHA Development Corporation may employ his or her niece as a secretary as long as the Executive Director does not violate Section 2-11.1(g) (misuse of official position) in securing the position for his or her niece. The Conflict of Interest ordinance does not specifically prohibit nepotism in hiring. ¹

¹ State law prohibits public officials from appointing, employing, promoting and advancing relatives. See Section 112.3135, F.S. (2006)

Similarly, the Conflict of Interest ordinance does not prohibit an entity with which the MDHA Development Corporation does business from hiring the sister of the Executive Director as long as Section 2-11.1(g) is not violated.

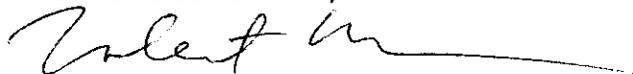
Therefore, the MDHA Development Corporation may enter into a contract with an entity with whom a board member is involved in an unrelated business venture. However, a board member is prohibited from voting or taking any official action regarding the entity. Further, a board member may not disclose any confidential information to the entity or acquire a financial interest in any project or entity which may benefit from the board's decisions.

The Conflict of Interest ordinance also permits the relatives of the Executive Director to be employed by an entity with which the MDHA Development Corporation does business as long as Section 2-11.1(g) (misuse of official position) is not violated. However, state law prohibits the Executive Director from appointing a relative to work in the same agency.

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