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March 26, 2007

Michael C. Góngora, City Commissioner
City of Miami Beach
c/o Becker & Poliakoff
121 Alhambra Plaza, 10th Floor
Coral Gables, FL 33134

Re: ROO 07-08

Dear Commissioner Góngora:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on March 22, 2007.

In your letter of March 19, 2007, you asked whether attorneys at the law firm employing you as an associate may represent clients and/or lobby before the City of Miami Beach commission, subordinate boards and committees, and staff. You further asked if the opinion would be different if you changed your current employment status to "of counsel."

Briefly, the Commission on Ethics opined that under the City of Miami Beach Code, attorneys at the firm employing you may neither represent third parties nor lobby on behalf of third parties before the City, regardless of your affiliation with the law firm.

THE MIAMI BEACH CODE AT § 2-459, *Certain appearances prohibited*, provides—

- (a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:
- 1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.
 - 2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.

Under Definitions, section (b) of the City Ordinance, an "associate" is defined as—

any person or entity engaged in or carrying on a business enterprise with a city agency member as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property.

Persuaded by the legislative intent of the City Ordinance found in its Preamble and precedent established by the City of Miami Beach, the Ethics Commission adopted an expansive definition of "joint venturer" to include "employee." Consequently, lawyers at the firm employing you are prohibited from appearing before the City, regardless of your employment status.

Since the City of Miami Beach Ordinance attempts to be more stringent in this matter than the County Conflict of Interest & Code of Ethics Ordinance, *Certain appearances and payment prohibited*, § 2-11.1 (m)(1), the City Ordinance is controlling. (The Commission on Ethics opined that under the County Code alone, lawyers at the firm employing you would have been allowed to represent third parties before the City, as long as you were not compensated, either directly or indirectly, for services rendered.)

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance and City of Miami Beach Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact Victoria Frigo, Staff Attorney, at (305) 350-0601, or Robert Meyers at (305) 579-2594, if we can be of further assistance in this matter.

Sincerely yours,



ROBERT MEYERS
Executive Director

copies:

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