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ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

June 27, 2007

Stuart R. Michelson, Esq.
800 SE 3rd Ave., 4th Floor
Ft. Lauderdale, FL 33316

Via First Class Mail and Fax at 954 463-5599

Re: RQO 07-20 Rick Stauts

Dear Mr. Michelson:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on June 26, 2007.

YOU ASKED if Rick Stauts, Executive Director of the City of Homestead's Community Redevelopment Agency (CRA), violates the Ethics Code when his wife receives city CRA redevelopment benefits through a nonprofit organization that the CRA financially supports and contracts with to administer a CRA project.

IN SUM, the Ethics Commission opined that Mr. Stauts violates the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance at § 2-11.1 (n) because he participates in official actions that affect his wife's business.

THE FACTS, based on our investigation and your letter of June 8, 2007, are as follows: Rick Stauts is Assistant City Manager of the City of Homestead and Executive Director of the City of Homestead's Economic Rebuilding Organization (hereafter referred to as the CRA), a political subdivision of the City of Homestead.

The Homestead CRA owns the Meek Center, a building used as a business incubation facility. Business Technology Development Corp. (BTDC), a nonprofit organization, contracts with the CRA for an annual rent of One Dollar (\$1) to lease and manage the Meek Center as a business incubator.¹ In return, the

¹ Lease Agreement (Oct. 1, 2006).

CRA donated \$75,000 last year to the nonprofit² to subsidize below-market rents and other services³ for start-up companies located in the Meek Center.

One of the tenants now renting at the Meek Center is "Treasures by Joanna," a start-up company owned by Joanna Stauts, Rick Stauts' wife. "Treasures by Joanna" pays \$140 per month rent for a commercial space of 166 square feet. It appears that Ms. Stauts' business qualified without undue influence for space at the incubation center.

THE LEGAL BASIS for the prohibition on this arrangement is found at Section 2-11.1 (n) of the Ethics Code, which states in pertinent part—

(n) ACTIONS PROHIBITED WHEN FINANCIAL INTERESTS INVOLVED. No [city employee] shall *participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest.* A financial interest is defined as a special financial interest, direct or indirect, as that term is used in Section 4.03 of the County's Charter; or as a financial interest as defined in Section 769 of the Restatement of the Law of Torts as an investment or something in the nature of an investment.

This section *shall not prohibit* any official, officer, *employee* or person from *taking official action* ... to authorize the expenditure of public funds for promoting ... downtown development or redevelopment, *so long as* no such authorized public funds *are to be paid to* such person or *a member of his immediate family or any business in which he or any member of his immediate family has a financial interest.* (Emphasis added.)

THE ISSUE is whether Mr. Stauts' participation in official actions at the CRA results in small businesses at the Meek Center "being paid" with CRA funds, even when these funds pass through the nonprofit organization BTDC. The Ethics Commission found that, under a leasing contract between BTDC and the CRA, BTDC stands in the shoes of government to operate the Meek Center on behalf of the CRA as a business incubator.⁴ Consequently, the Ethics Commission concluded that Mr. Stauts' official actions have a direct financial impact on incubator businesses subsidized by the nonprofit BTDC, which is funded by the CRA.

² Prior to Oct. 1, 2006, a predecessor nonprofit organization operated the Meek Center on behalf of the CRA and received a total donation of \$110,000 from the CRA over a two-year period.

³ Other business incubation services include clerical support, meeting and conference room facilities, loan guidance, entrepreneurial education, and marketing analysis assistance.

⁴ Two terms of the Leasing Agreement between the Homestead CRA and BTDC specify that BTDC must use the Meek property solely as a "business incubator." Arts. 1 & 5. Lease Agreement (Oct. 1, 2006). Additionally, a 2006 CRA budget item described as "administrative services" for the "Meek Center" was in actuality a \$75,000 donation to a precursor nonprofit organization that supported these incubation efforts. When the precursor dropped out of the program in 2006, BTDC became its successor.

TO RESOLVE THE CURRENT VIOLATION, you have advised Michael Murawski, Advocate for the Ethics Commission, that Mrs. Stauts will remove her business and terminate her lease at the Meek Center within 60 days.

PLEASE ADVISE MR. MURAWSKI BEFORE AUGUST 31, 2007, THAT MRS. STAUTS HAS REMOVED HER BUSINESS FROM THE MEEK CENTER.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics 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

copy: Michael Murawski, Advocate
Miami-Dade County Commission on Ethics & Public Trust

