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June 27, 2007

Eve A. Boutsis, General Counsel
Housing Authority of the City of Miami Beach
c/o Nagin Gallop Figueredo, P.A.
18001 Old Cutler Road, Suite 556
Palmetto Bay, FL 33157

Via First Class Mail and Fax at 305 854-5351

Re: RQO 07-21 Housing Authority of the City of Miami Beach (HACMB)

Dear Ms. Boutsis:

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

YOU ASKED in your letter of June 18, 2007, if Miami Beach Ordinance § 2-459, as amended,¹ which prohibits certain appearances of law associates before City boards, agencies, or committees, applies to the Housing Authority of the City of Miami Beach (HACMB). Currently, the Chair of the HACMB is an attorney at a law firm, and several of the Chair's associates at the law firm lobby the City of Miami Beach.

IN SUM, the Ethics Commission opined that City Ordinance § 2-459 does *not* apply to HACMB members because, as a distinct quasi-municipal corporation created by State law, the HACMB is an independent legal subdivision of the State, not part of City government.

The Ethics Commission found that several factors argue against applying City Ordinance § 2-459 to the HACMB, including, but not limited to, the following:

- Under broad police powers derived from the State,² the HACMB may own, acquire, construct, and operate property; incur debt and invest funds; sue and be sued; initiate eminent domain proceedings; and by numerous other means establish and maintain affordable and habitable housing—all in its own name as a quasi-municipal corporation.

¹ The amendment now specifically defines "associate" as a person having "a business affiliation with a City agency member where an 'employee' or 'of counsel' relationship exists." The amendment took effect on June 16, 2007.

² Fla. Stat. §§ 421-001 to 421.061 (2006).

- The Florida supreme court identified municipal housing authorities as “separate and distinct corporate” entities that are not municipalities.³
- HACMB receives no funds from the City of Miami Beach. The HACMB is funded entirely by the federal government and is regulated by U.S. HUD.
- HACMB, under its own Employer Identification Number, hires its own employees who participate in the HACMB health insurance program and the State pension fund, separate and distinct from City of Miami Beach employees, the City health insurance program, and the City pension fund.
- Although City Commissioners of the City of Miami Beach appoint HACMB board members, the City has no subsequent authority over HACMB members whatsoever, lacking even the ability to later remove those it has appointed.
- Contracts and other dealings between the City of Miami Beach and the HACMB are at arms length. For example, the City and the HACMB engaged in an interlocal agreement to loan a City employee to the HACMB. Additionally, the City is considering using eminent domain against HACMB-owned property.

Because the HACMB is an independent legal subdivision of the State, not part of City government, the Ethics Commission concluded that the City prohibition against appearances by associates, at City Ordinance § 2-459, does not apply to HACMB members and their associates when they appear before the City. Therefore, associates of the Chair of the HACMB are not prohibited from appearing as lobbyists in the City of Miami Beach.

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: Jean Olin, Assistant City Attorney
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³ State ex rel. Burbridge v. St. John, 143 Fla. 544, 551 (Fla. 1940).

