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July 2, 2007

Jack Hartog
Assistant County Attorney
Public Health Trust
West Wing, Room 109
1611 N.W. 12th Avenue
Miami, Florida 33136

RE: REQUEST FOR ADVISORY OPINION RQO 07-26

Dear Mr. Hartog:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 26, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the Cone of Silence is reimposed after a bid protest is filed if the bid protest is referred back to staff for review and recommendation.

In your request, you advised the Commission that the Chief Purchasing Officer of the Public Health Trust has made a formal award recommendation to the Board of Trustees. The award is currently the subject of a timely bid protest. Under the Trust's procurement policy, a timely bid protest removes the matter from consideration by the Board of Trustees. The Chief Purchasing Officer, in consultation with the County Attorney may make a decision regarding whether the procurement was in accordance with applicable laws, ordinances, rules and policies. The Chief Purchasing Officer has broad authority

regarding the bid protest including the authority to negotiate settlements or cancel the solicitation. The Public Health Trust is seeking an opinion as to whether the referral back to the Chief Purchasing Officer for action reimposes the Cone of Silence pursuant to Section 2-11.1(t)(1)(b)(ii).

The Ethics Commission found the Cone of Silence is not reimposed due to the timely filing of a bid protest. Section 2-11.1(t)(1)(b)(ii) provides that "the Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided however that if the Commission refers the Manager's recommendation back to the Manager or staff for further review; the Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation." The Conflict of Interest ordinance is modified in regard to the Public Health Trust so that the Board of Trustees substitutes for the Board of County Commissioners and the Chief Operating Officer or his or her designee is substituted for the County Manager.

The bid protest procedure established by the Public Health Trust is not a referral back to the staff for further review as delineated in the Cone of Silence. The Chief Procurement Officer's authority to take any necessary action to resolve a timely filed bid protest is not a referral from the Board of Trustees to staff for further review of the award recommendation. The handling of the bid protest is a procedural safeguard to ensure that all required laws and procedures were followed and that any necessary adjustments are made. The bid protest procedure does not vitiate the initial award recommendation or require the Chief Operating Officer to make a subsequent written recommendation regarding award of the contract. Therefore, Section 2-11.1(t)(1)(b)(ii) does not apply and the Cone

of Silence is not reimposed during the bid protest period.

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 Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director