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October 25, 2007

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ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

Milton Vickers
Executive Director
Metro-Miami Action Plan
19 West Flagler
M-106
Miami, FL 33130

RE: REQUEST FOR ADVISORY OPINION-RQO 07-45

Dear Mr. Vickers:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 24, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion seeking a review of RQO 06-52 concerning the award of a contract to the Chair of the MMAP Board.

In your request, you advised the Commission that the Florida Martin Luther King Institute for Non-Violence is a private non-profit organization that provides training for various groups including police departments, youth organizations and local governments on non-violent alternatives to resolving disputes. Although MMAP was involved in the creation of the Institute, the Institute is a separate organization and does not receive budgetary or staffing support from MMAP.

The MLK Leadership Academy is a MMAP program that provides academic and social training to middle-school aged students. The program also includes a component on non-violent dispute resolution techniques.

In 2006, the Commission opined that MMAP could contract with the Institute to provide services as long as the Chair did not vote on the contract and did not receive any salary from the MMAP contract.

Pursuant to that opinion, MMAP contracted with the Institute to provide services. The executed agreement provides that the Institute will provide non-violence education and training to Teen Court participants during the 2006-07 fiscal year. The contract amount is forty-five thousand dollars and includes the services of a trainer and administrative costs.

The Commission found that MMAP may continue to contract with the Institute to provide non-violence education and training services to Teen Court participants. However, as stated in the original opinion, the Chair may not vote on the matter. Further, in addition to the restrictions contained in the original opinion, Section 2-11.1(m)(1) prohibits the Chair from executing contracts on behalf of the Institute or receiving any financial compensation from the Institute that includes MMAP funds. Finally, Section 2-11.1(g) prohibits the Chair from using his official position as MMAP chair to benefit the Institute.

Section 2-11.1(d) provides that no employee " shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or she or any member of his or her immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. The ordinance defines controlling financial interest as ten percent or more of the capital stock in a business entity. The Ethics Commission has previously opined that Section 2-11.1(d)'s restriction on

contracting does not extend to contracts between the county and non-profit organizations. Therefore MMAP may continue to contract with the Institute to provide services.

However, Section 2-11.1 (v) prohibits board members from voting on matters where they serve as an employee of the entity seeking action from the county entity. Section 2-11.1(v) provides that no board member "shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor."¹ Since Mr. Jones serves as Executive Director of the Institute, he may not vote on any matter involving the academy.

Finally, Section 2-11.1(m)(1) provides that "no person included in the terms defined in subsections (b)(1), (b)(5) and (b)(6) (Commissioners, departmental personnel and employees) shall appear before any County board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form for services rendered to a third person who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person. Nor shall such person appear before any administrative tribunal as counsel or legal advisor to a party who seeks legal

¹ Mr. Jones is still bound by this provision although he is an employee on loan from the Miami-Dade Police Department.

relief from the County or a county agency through the suit in question." Accordingly, the Chair is prohibited from executing contracts on behalf of the Institute with MMAP or receiving any compensation from the Institute that is derived from MMAP funds. Further, a "benefit" in this context would include participation in negotiations with MMAP staff regarding contract terms and other issues between MMAP and the Institute.

Accordingly, the Conflict of Interest and Code of Ethics ordinance permits MMAP to continue to contract with the MLK Institute to provide non-violence training and education to Teen Court participants. However, Section 2-11.1(v) prohibits the MMAP chair from voting on the contract. Finally, Section 2-11.1(m)(1) prohibits the Chair from executing the agreement on behalf of the Institute or receiving any compensation from MMAP funds.

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