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August 29, 2008

Michael C. Góngora, Esq.
Becker & Poliakoff
121 Alhambra Plaza, 10th Floor
Coral Gables, FL 33134

Fax at 305.442.2232

Re: RQO 08-26

Dear Mr. Góngora:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on August 28, 2008.

In your emails of May 21 and June 11, 2008, you asked if you could appear before the City of Miami Beach within two years of your service on the City Commission to represent a nonprofit organization that has retained you as legal counsel.

Briefly, the Commission on Ethics opined that you may *not* appear before the City of Miami Beach because your attorney-client relationship with the nonprofit organization does not fall within one of the exemptions to the “two-year rule.” See Section 2-11.1 (q)(2) of the County Ethics Code.

The facts as we understand them are as follows: You served as a City Commissioner in the City of Miami Beach until November 21, 2007. Recently, you were retained as legal counsel by E-COMB, Inc., (Environmental Coalition of Miami Beach), a nonprofit organization incorporated in the State of Florida. The mission of E-COMB is to foster healthy ecosystems in and around Biscayne Bay. You would like to appear before the City of Miami Beach seeking to encourage the City to collaborate with and participate in the general objectives and related events supported by E-COMB.

The County ordinance governing these facts is found at § 2-11.1 (q). Generally, the law prohibits former elected officials from lobbying before their respective governments for two years following their public service. Three exceptions to the prohibition are provided in subsection (q)(2), specifically—

The provisions of this Subsection (q) shall not apply to officials... who become *employed by* governmental entities, 501(c)(3) *non-profit entities* or educational institutions or entities and who lobby on behalf of such entities in their official capacities. (Emphasis added.)

The Ethics Commission opined that being retained as legal counsel by a nonprofit organization is not the same as being employed by the nonprofit. Specifically, the Commissioners noted that you are currently employed by Becker & Poliakoff. They stated that your relationship to E-COMB is one of lawyer-client, not employee-employer.

Consequently, the "two-year rule" at § 2-11.1 (q) prohibits you from lobbying the City of Miami Beach on behalf of E-COMB until November 21, 2009, based on your current set of facts.

This opinion construes the Miami-Dade County Conflict of Interest & Code of Ethics Ordinance, but is not applicable to any conflict under state law. Please note, for example, that Fla. Stat. 112.313(14) appears to prohibit a former city official from representing third parties, for compensation, before the former official's governing body, city manager, and staff for a period of two years. 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, Special Counsel
City of Miami Beach
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