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September 2, 2008

Daniel A. Weiss, Esq.
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Museum Tower
150 West Flagler St., Penthouse
Miami, FL 33130

Fax at 305.374.0081

Re: **RQO 08-29**, Orlando J. Diez
Outside Employment Conflicts related to
Construction Manager II
Employed by City of Miami

Dear Mr. Weiss:

The Commission on Ethics & Public Trust considered your request for an opinion on behalf of your client, Orlando J. Diez, and rendered its opinion at a public meeting held on August 28, 2008.

IN YOUR CORRESPONDENCE OF JUNE 6 and AUGUST 2, 2008, you stated that Orlando J. Diez is employed by the City of Miami as a Construction Manager II in the City's Capital Improvements and Transportation Department. Mr. Diez asks whether conflicts of interest are created when he concurrently engages in outside employment as the owner of a construction company and as a Miami-Dade County Code Enforcement hearing officer.

AFTER CONSULTING WITH THE ETHICS COMMISSION, Mr. Diez has agreed to abide by numerous safeguards, listed below, which the Ethics Commission proffered in an attempt to prevent conflicts of interest as well as frequent and recurring appearances of impropriety.

THE FACTS as we understand them as are follows: Mr. Diez is the president, registered agent, and 51% owner of Jolten Group, Inc., a privately held Florida corporation that functions as a general contractor in the construction of custom homes and commercial buildings. The company has two full-time employees. In addition, based on a recommendation by the Ethics Commission, Mr. Diez has hired a certified general contractor to serve as Construction Manager to handle day-to-day operations of the Jolten Group.

Mr. Diez is also a hearing officer for the Miami-Dade County Code Enforcement Board. The code enforcement board is a quasi-judicial entity with the power to issue

orders having the force of law to command whatever steps are necessary to bring a building code violation into compliance.

THE LEGAL ANALYSIS of this matter focuses on the first principles on which all government ethics rules are founded, *i.e.*, that public employees are agents of the people and hold their positions for the benefit of the public; that public office is never to be used for private gain; and that private economic considerations may never override the faithful discharge of public responsibilities.¹ At the same time, governments must attract individuals from the private sector with special knowledge to serve in government positions.

THE ETHICS COMMISSION FOUND that Mr. Diez's outside employment as a hearing examiner is not problematic, as long as he follows the dictates of the County Ethics Code, with special attention to § 2-11.1 (v) regarding voting conflicts. In his capacity as a hearing examiner, Mr. Diez's knowledge of the construction industry is an asset that directly helps the County Code Enforcement Board maintain building standards that promote public safety.

The City of Miami is advised, however, that approving Mr. Diez's outside employment as a general contractor may cause frequently recurring conflicts between his private interests and the performance of his public duties. To avoid any situations that would impede the full and faithful discharge of his duties to the City of Miami, Mr. Diez has agreed to follow the provisos listed below for the duration of his employment with the City of Miami:

MEASURES AGREED TO BE UNDERTAKEN

BY ORLANDO J. DIEZ:

- Mr. Diez will hire a certified general contractor to serve as Construction Manager to handle day-to-day operations of the Jolten Group. (On August 28, 2008, Mr. Diez stated that he had hired Jesus Perez to fill this position.)
- Jolten Group will not apply for, nor be issued, building permits in the City of Miami.
- Jolten Group subcontractors will not apply for, nor be issued, building permits in the City of Miami *for any projects associated with Jolten Group*.
- Jolten Group is prohibited from providing services to any clients or contracting with any subcontractors currently engaged in construction for the City of Miami or reasonably anticipated to engage in construction for the City of Miami, regardless of where the private construction project is expected to take place.
- A list of all Jolten Group projects, subcontractors, and clients worldwide will be submitted *July 1st of each year* to the City of Miami attorney's office and the Miami-Dade Commission on Ethics for review. The Ethics Commission may assign an investigator to monitor all Jolten Group projects.
- Mr. Diez will not use any government resources to conduct his outside employment. He will take approximately one day off per month, without City pay, to serve as a County hearing officer. Additionally, Mr. Diez will

¹ See, particularly, Miami-Dade County Conflict of Interest & Code of Ethics Ordinance at §§ 2-11.1 (d), (g), (h), (j), (k), (n), and (p).

limit conducting business for Jolten Group to weeknights and weekends, after government hours only. A newly hired certified general contractor will serve as Construction Manager to handle day-to-day operations for the Jolten Group.

- Regarding potential voting conflicts as a hearing examiner on the County Code Enforcement Board, the County Ethics Code at § 2-11.1 (v) requires that Mr. Diez recuse himself if he would be directly affected by the action of the board and if he has any of the following relationships with any person or entity appearing before the board—officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor.

Additionally, Mr. Diez must abide by the County Ethics Code at § 2-11.1 (k)(2), which requires that he—

- submit a “Request for Outside Employment” statement annually to the City Clerk indicating his supervisors’ approval of his outside employment
- file an “Outside Employment [Income] Statement” with the City Clerk by July 1 of each year indicating his outside employment income and other related information.

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,



ROBERT MEYERS
Executive Director

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