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September 2, 2008

Peter Liu
Office of Inspector General
19 West Flagler Street
Suite 220
Miami, FL 33130

RE: REQUEST FOR ADVISORY OPINION RQO 08-41

Dear Mr. Liu:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on August 28, 2008 and rendered its opinion based on the facts in your request.

You requested an opinion regarding whether the member of the board of directors of a corporation is required to register as a lobbyist prior to participating in contract negotiations.

In your request, you advised the Commission that the Seaport is currently engaged in contract negotiations with the Port of Miami Terminal Operating Company (POMTOC). POMTOC is an entity composed of three corporations which was organized for the purpose of operating a cargo terminal at the Port of Miami. POMTOC also operates stevedoring operations at its cargo terminals at the Port of Miami. The new agreement requires approval by the Board of County Commissioners.

POMTOC's negotiating team has been primarily composed of John Ballestero, POMTOC General Manager and Charles O'Malley, POMTOC Chief Financial Officer. However, Amadeo Lopez-Castro, a director of POMTOC attended a recent negotiating session. The Office of Inspector General is monitoring the negotiations.

The Ethics Commission found that Section 2-11.1(s) requires Castro to register as a lobbyist to attend negotiation meetings. Section 2-11.1(s) requires the principal of a corporation to register as a lobbyist. Section 2-11.1(s) states that "Lobbyist" means all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee. "Lobbyist" specifically includes the principal, as well as any employee whose normal scope of employment includes lobbying activities.

The Conflict of Interest ordinance does not define the term principal. The Ethics Commission has previously held that the president of a corporation is a principal. (See Complaint 01-20) State law defines a principal as "the person, firm, corporation or other entity which has employed a lobbyist." Section 112.3215, F.S. (2007). Other jurisdictions similarly define a principal as the individual or entity that directs, employs, appoints or retains the lobbyist.

Under the Conflict of Interest and Code of Ethics ordinance, a principal is the owner, president or chief shareholder of a corporation or an individual who has been designated or who has the apparent authority to make final decisions on behalf of a corporate entity during the decision-making process on any action, decision or recommendation by county personnel that requires review or approval of county boards, county committees or the Board of County Commissioners. The principal must also have the authority to direct, employ, appoint and retain lobbyists on behalf of the corporate entity.

Under this definition, a member of the Board who is appointed to serve as the representative of the corporation in negotiations is a principal and is required to register as a lobbyist. Therefore, Mr. Lopez-Castro is required to register as a lobbyist to attend negotiating sessions for the POMTOC contract.

As for the other members of the negotiating team, Section 2-11.1(s) specifically excludes from the definition of lobbyist employees whose normal scope of activities does not include lobbying. Therefore, the Chief Financial Officer is not a lobbyist because his normal scope of employment does not include lobbying activity. As for the General Manager, he may or may not be a lobbyist depending on whether he falls within the definition of principal stated herein.

This opinion construes the Miami-Dade Conflict of Interest 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,

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

ROBERT MEYERS
Executive Director

cc: Juan Kurlya, Seaport