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February 9, 2009

Benedict P. Kuehne, Esq.
100 SE 2nd Street
Miami, FL 33131

Via First Class Mail and Fax at 305.789.5987

Re: RQO 09-04, Valuation of Private Air Travel, County Code § 2-11.1 (e)

Dear Mr. Kuehne:

The Commission on Ethics & Public Trust considered a question posed by you, on behalf of a client, and rendered an Ethics Opinion at a public meeting held on January 29, 2009.

In correspondence dated January 15, 2009, you asked several questions. First, you inquired about circumstances that would require an elected official to report air travel on a private conveyance as a gift. Next, if reporting of air travel on a private conveyance was required, you asked how to value the gift. Third, you asked about gift disclosure requirements associated with upgrades to a higher class of travel offered to officials by commercial airlines.

The facts as we understand them are that a municipal elected official recently traveled to Washington, D.C., on behalf of his city for a League of Cities event. The municipality paid for the official's non-refundable, round-trip airline ticket. The one-way portion of that trip amounted to \$99.94, exclusive of taxes and fees. A friend of the municipal elected official who was in Washington, D.C., at the time offered the elected official return travel to Miami-Dade County on his private jet. The friend does not do business, directly or indirectly, with the municipality in which the elected official serves. The return trip portion of the elected official's commercial airline ticket, paid for by the municipality, could not be processed for a refund.

Based on the Miami-Dade County Conflict of Interest & Code of Ethics Ordinance regulating gifts at § 2-11.1 (e), the Commission on Ethics declared the following:

1. Based on the plain meaning of the County gift ordinance, private air travel has an economic value and, if the recipient has not provided adequate consideration for it, the private air travel is a gift.

Furthermore, the private air travel is a gift to the elected official, not to his municipality if the gift is given specifically to the elected official and is under his exclusive control. Regardless of whether the elected official is conducting official business at the time, if the private air travel has not been given to the

municipality, to be used for a public purpose to be determined by, and under the exclusive control of, the municipality, then the recipient of the gift is the elected official.

2. The Ethics Commissioners opined that valuation of air travel on a private conveyance shall be consistent with criteria established under State gift disclosure laws. Since substantially all local elected officials submit a copy of State Form 9 to comply with County gift disclosure requirements, achieving consistency with State law avoids confusion and prevents inadvertent errors in reporting.¹

State law values private air travel "the same value as an *unrestricted* coach fare." (Emphasis added.)² This Ethics Opinion affirms that the County shall adopt the same valuation as the State.

3. An upgrade by a commercial airline to a higher class of travel is a reportable gift if the value is \$100 above the purchase price of the ticket. This is consistent with County Ethics Opinion RQO 04-165, which stated that County employees who receive frequent flyer miles as a result of traveling on County business must report the miles as a gift if County travel miles can be separated from personal travel.

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

¹ Miami-Dade County Code at 2-11.1 (e)(4). Achieving consistency with State law was recently demonstrated with an amendment to the County gift ordinance that increased the reporting threshold from \$25 to \$100, as per Fla. Stat. 112.3148 (2004). County Ordinance No. 04-119 (June 8, 2004)

² Fla. Admin. Code Ann. 34-13.500 (2008).