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January 22, 2010

**ETHICS COMMISSIONERS**

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Miami-Dade Transit  
6601 N.W. 72<sup>nd</sup> Avenue  
Miami, FL 33166

**RE: REQUEST FOR ADVISORY OPINION RQO 10-01**

Dear Mr. Chayt:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 21, 2010 and rendered its opinion based on the facts stated in your request.

You requested an opinion regarding whether an elevator contract specialist may perform outside employment as an elevator inspector.

In your request, you advised the Commission that Marcos Bermudez is an elevator contract specialist for Miami-Dade Transit. Bermudez is responsible for evaluating the performance of Transit contractors responsible for construction and maintenance of elevators in transit facilities. Bermudez is also responsible for consulting with contractors on installation and maintenance and making recommendations regarding minimum standards for materials and workmanship. Finally, Bermudez is responsible for performing semi-annual inspections of elevators and escalators to ensure that they meet state and local safety codes. Inspection certificates are issued by GSA's Office of Elevator Safety.

Bermudez is the president of ALL USA Elevators. All USA Elevators performs safety

inspections for elevators in privately owned buildings. The firm does not do any work for governmental entities and Bermudez is not responsible for evaluating any work that may be done by his firm.

GSA has raised concerns related to Bermudez' outside employment. Specifically, the department is concerned that Bermudez' firm is certified to perform elevator maintenance and may bid against firms that he supervises in his public capacity. GSA is also concerned that Bermudez may inspect work in his private capacity that is performed by companies whose work he supervises as an elevator contracts manager. Finally, GSA is concerned that he conducts inspections of work where he has managed the construction and maintenance of the elevators and escalators.

The Commission found Bermudez may perform outside employment as an elevator inspector but he may not perform inspections on work done by vendors that he supervises in his public capacity. Section 2-11.1(j) prohibits an employee from accepting outside employment that may impair his independence of judgment in performing his public duties. If Bermudez is evaluating work by the same companies in both capacities, then it may impair his independence of judgment in his public capacity.

Further, the Transit Department must monitor Bermudez' activities to ensure that he does not compete with vendors he supervises in his private capacity. Although Bermudez is not currently performing elevator maintenance work in his private firm, his certification permits the firm to do such work.

Accordingly, Bermudez must submit semi-annual reports to Transit and the Ethics Commission of all of his inspections and submit requests to Transit and the Ethics Commission prior to submitting bids on any contracts for elevator maintenance and repair work.

The other conflict issues raised by GSA, such as managing and inspecting the same work, are management issues beyond the scope of the Conflict of Interest ordinance.

Accordingly, Bermudez may engage in outside employment subject to the restrictions contained herein. Further, Bermudez must submit the required reports to Transit and the Ethics Commission so that the department can monitor Bermudez' compliance with the restrictions contained in this opinion.

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

cc: Marcos Bermudez, Miami-Dade Transit  
Michael Chavez, GSA