



Via First Class Mail  
and  
email at [MKelly@miamiplasticsurgery.com](mailto:MKelly@miamiplasticsurgery.com)

July 20, 2010

**ETHICS COMMISSIONERS**

Kerry E. Rosenthal, CHAIRPERSON  
Dawn E. Addy, VICE CHAIRPERSON  
Judge Seymour Gelber

ROBERT A. MEYERS  
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI  
ADVOCATE

ARDYTH WALKER  
STAFF GENERAL COUNSEL

The Honorable Michael Kelly, Councilman  
Key Biscayne Village Hall  
88 W. McIntyre St.  
Key Biscayne, FL 33149

Re: RQO 10-20 Voting Conflict  
Miami-Dade County Ethics Code at Section 2-11.1 (d)

Dear Dr. Kelly:

In public session on July 20, 2010, the Ethics Commission responded to your query regarding a potential voting conflict on a resolution to rezone an area of Key Biscayne near your home.

The Ethics Commission opined that you do not have a voting conflict because you have none of the prohibited relationships with current persons and the entity that might be affected by the Council's decision, and you will not be affected in a manner distinct from the manner in which the public will be affected generally.

In your email of July 14, 2010, you stated that you sponsored a resolution to change the zoning in the HR district.<sup>1</sup> If passed, your resolution would establish greater setbacks, limit building heights, and reduced the Floor-Area Ratio (FAR) for future building developments not currently approved. Owners of property within the HR district have challenged your ability to vote on the resolution based on the proximity of your home to the HR district and the number of people who will be affected by the Council's decision.

The Miami-Dade County Code at Sec. 2-11.1 (d) prohibits council members from voting or participating in any way in any matter if the member has any of the enumerated relationships with the persons or entity that would or might be directly or indirectly affected by the vote<sup>2</sup> or if the

<sup>1</sup> The HR district includes the former Sonesta Hotel site and the current site of the Silver Sands Hotel.

<sup>2</sup> Prohibited relationships enumerated in the County Code at Sec. 2-11.1 (d) include officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or stockholder, bondholder, debtor, or creditor.

matter would affect the council member in a manner distinct from the manner in which it would affect the public generally.<sup>3</sup>

You stated that you have none of the enumerated relationships with the persons and the entity that would or might be directly or indirectly affected by the vote. Additionally, as one of approximately 1,500 property owners surrounding the subject property, the Ethics Commission concluded that you would not be affected in a manner distinct from the manner in which the vote would affect the public generally.<sup>4</sup>

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance, but it is not applicable to voting conflicts under State law.<sup>5</sup> Questions regarding State law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact or me or Staff Attorney Victoria Frigo if we can be of further assistance in this matter.

Sincerely,



ROBERT MEYERS  
Executive Director

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<sup>3</sup> The Council Member would be distinctly affected if he were to profit or be enhanced by the action of the Council, directly or indirectly.

<sup>4</sup> Although not bound by the State Ethics Commission's "size of the class" analysis, the County Ethics Commission noted that you represent approximately 0.06% of the class of homeowners that would be affected by a vote on the resolution. In view of that, you would not likely be affected in a manner distinct from the manner in which the vote would affect the public generally.

<sup>5</sup> Florida law prohibits a council member from voting "on any measure that would inure to his or her special private gain or loss." Fla. Stat. 112.3143 (3)(a) (2009).