MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Miguel de Grandy, Esq.
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Re: INQ 19-98, Section 2-11.1(s), County Ethics Code, Lobbying (Contingency Fees)

Dear Mr. de Grandy,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the applicability of the County Ethics Code lobbying requirements to your client, a prospective County lobbyist.

You have indicated that your client is a salesperson whose duties include meeting with prospective clients, private or public, to market his company's goods and services.

He is compensated as follows: He is paid both a fixed and variable compensation amounts. The *variable compensation* is based on the total amount of contract dollar volume that he sells to all his customers in a year, as a percentage of their assigned total annual sales volume quota. In other words, the amount of any County contract volume achieved in a year will be part of the *actual* total amount of contract volume achieved during the year. Notably, the salesperson will not be specifically compensated for the amount of any specific contract by itself. This (variable) compensation arrangement is a common practice in the industry.

Section 2-11.1(s) of the County Ethics Code, *Lobbying* (the ordinance), defines a lobbyist as a person who is employed or retained by a principal "who seeks to encourage the passage, defeat or modification" of resolutions, ordinances, actions or decisions which will be made or will be foreseeably heard or reviewed by the County Commission, Mayor, County board or committee.

Regarding the contingency fee arrangements prohibited by the ordinance, a contingency fee is defined as a fee, bonus, commission, or non-monetary benefit or compensation, which is dependent on or in any way contingent on the passage, defeat or modification of the official government action. The ordinance prohibits a person from giving, agreeing to give, receiving or agreeing to receive, in whole or in part, a contingency fee. This prohibition serves to restrict the form of compensation that a principal is permitted to give (and a lobbyist is permitted to receive) while protecting against possible tendencies to corrupt the government process which may exist when lobbyist compensation is contingent on obtaining the desired action.

Generally, a person who is employed or retained by a principal and has been assigned to represent the interests of that principal, may lobby as long as the entire, definitive amount of compensation related to the lobbying activity is established at the time the person lobbies and such amount is not dependent on the success of the lobbying efforts. INQ 12-132

An exception has been made for employees of principals whose duties include lobbying on behalf of their employers. For example, the ordinance does not prohibit a salesperson from lobbying on behalf of his or her company and receiving compensation or commission as part of a *bona fide* practice of the company, provided such compensation or commission is ordinary and customary in the industry.[1] In general, these commission percentages are awarded based on the profit of the sale in question. RQO 06-34; INQ 12-231

In this instance, the company's customary and established practice is to provide a both, a fixed and variable compensation, the latter, based on the total amount of contract dollar volume that the salesperson sells to all his or her customers in a year, as a percentage of their assigned total annual sales volume quota. Such arrangement does not appear to be prohibited by the ordinance because it is an established practice of the company and the allocation method has already been determined. INQ 19-06

Consequently, the contingency fee prohibition in Section 2-11.1(s) will not apply where the salesperson-lobbyist receives a variable compensation calculated by the total amount of contract dollar volume that the person sells in a year and such compensation is an established bona fide practice of the company.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

[1] A salesperson is a person whose duties ordinarily involve covering assigned territory for a particular principal on a regular basis, visiting potential customers on these routes and attempting to interest the customers in corporate product or services. RQO 06-34