



JNQ 07-26

**MIAMI-DADE COUNTY
COMMISSION ON
ETHICS & PUBLIC TRUST**

February 16, 2007

Mitchell Bierman, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.A.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134

Dear Mr. Bierman:

I am in receipt of your correspondence dated February 15, 2007 and I wanted to respond in a timely fashion. In order to give you an opinion, I am relying on the following facts. You indicate that the organization you represent is an independent entity, receives most of its funding from Miami-Dade County and has agreed to comply with the County Conflict of Interest and Code of Ethics Ordinance and the Florida Sunshine Law. I will assume for purposes of this opinion that the organization is neither subject to Chapter 112 of the Florida Statutes nor has agreed to voluntarily comply with this law. You have posed three questions and I will address them separately.

Your first question centers on the fact that an entity seeking to contract with the organization you represent has business dealings with one of the organization's board members. You wish to know whether the organization may contract with the organization if the board member with the business interests absents himself from the discussions and does not vote on the award of the contract.

My analysis of this question will be limited to Section 2-11.1 of the Miami-Dade County Code. Under subsection (v) of 2-11.1, a voting conflict would be created for a quasi-judicial or advisory board member if the member were directly affected by the action of the board and if the board member has a special relationship with the applicant/party. Without knowing more about the organization, I will assume it meets the definition of an advisory board. In any event, the board member does have a relationship with the entity seeking action by the board and this would establish a voting conflict if the board member is also directly affected by the board's vote on the award of this contract. It appears the board member is directly affected by the board's vote and I agree with you that the member should refrain from any participation relative to this matter and should absent himself/herself from the meeting when this item is presented to the board. If such steps are taken by this board member, the organization may enter into a contract with the entity.

Your second question is whether the organization may enter into a business arrangement with another private entity where the other entity employs the sister of your organization's executive director. The County ethics code does not include a section on nepotism but contains a broader section concerning exploitation of official position. As long as the organization's executive director does not enter into a business arrangement with the other entity in an effort to benefit the director's sister, there would be no violation of the County's ethics ordinance.

Finally, you ask whether the organization may employ the niece of the executive director as a secretary. Once again, as long as the executive director is not exploiting his/her official position in hiring the niece, no ethical conflict exists. If the organization had decided to adhere to Chapter 112 of the Florida Statutes, I probably would have reached a different result.

If you have any questions concerning the above, please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Meyers', with a long horizontal line extending to the right.

Robert Meyers, Executive Director
Miami-Dade Commission on Ethics and Public Trust
(305) 350-0613

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**TO: Mr. Robert Meyers, Director
Miami-Dade County Commission
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**Facsimile: (305) 579-0273
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FROM: Mitchell A. Bicrman

COMMENTS: Please see attached correspondence.

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VIA FACSIMILE & E-MAIL

Mr. Robert Meyers, Director
Miami-Dade County Commission
on Ethics and Public Trust
19 West Flagler Street
Suite 820
Miami, Florida 33130

Re: Request for Informal Advice Concerning Ethics Issues

Dear Robert:

I represent a not-for-profit community organization ("The Organization") that was originally created by Miami-Dade County, but is now an independent entity. The Organization receives most, if not all, of its funding from Miami-Dade County and has voluntarily chosen to comply with the County's Ethics Ordinance as well as the Sunshine Law. I have the following questions with respect to the Organization:

1. If the Organization receives a single proposal in response to a request for proposals for a potentially valuable contract, and that proposal is from an entity (the "Entity") with which one of the Organization's board members has business dealings on other projects unrelated to the business of the Organization, may the Organization enter into an agreement with the Entity if the board member who has business dealings with the Entity absents himself from the discussion and voting on the award of the contract?
2. May the Organization enter into a business arrangement with another private entity where the other private entity employs the sister of the Organization's executive director?

Mr. Robert Meyers, Director
February 15, 2007
Page 2

3. May the Organization employ the niece of its Executive Director as a part-time secretary?

I would appreciate hearing back from you at your earliest convenience. Thank you. Please feel free to call me if you have any questions about this or any other matter.

Very truly yours,



Mitchell A. Bierman

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