

**Miami-Dade County
Commission on Ethics
& Public Trust**

19 West Flagler Street, Suite 820
Miami, FL 33130
frigov@miamidade.gov
phone: 305 579-2594
fax: 305 579-0273

May 21, 2007

Tony Recio, Esq.
Weiss Serota Helfman Patoriza Cole & Boniske
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

RE: Principal need not register as a lobbyist when speaking only at a properly noticed quasi-judicial zoning appeal hearing subject to the Jennings rule

REFERENCE No: INQ 07-70

Dear Tony:

Thank you for clarifying the circumstances under which a principal you represented spoke at a quasi-judicial zoning appeal hearing in the City of Miami. As we discussed today on the phone, the Ethics Commission does not require a principal to register as a lobbyist at a properly noticed quasi-judicial zoning appeal hearing that is subject to the Jennings rule.

Under the circumstances you described, all persons at the quasi-judicial hearing are exempt from registering as lobbyists because their presence and the benefit being sought are publicly noticed. Additionally, the Jennings rule prevents them from discussing the matter with decision-makers outside of the quasi-judicial hearing.

Under a different fact pattern, the requirement to register could be different.

Please feel free to contact me if you have further questions.

Sincerely,

sent via email at TRecio@wsh-law.com

Victoria Frigo
Staff Attorney

Copy: Michael Murawski, Advocate
Miami-Dade County Commission on Ethics & Public Trust

Frigo, Victoria (COE)

From: Murawski, Michael P. (COE)
Sent: Friday, May 11, 2007 4:50 PM
To: Meyers, Robert (COE)
Cc: Frigo, Victoria (COE)
Subject: FW: Request for Ethics Opinion

Robert:

I had this discussion w/ attorney from Weiss Serota on Friday, essentially he's asking for an opinion, I don't know if you all want to give him an informal or submit to the Commission on the 17th

-----Original Message-----

From: Tony Recio [mailto:TRecio@wsh-law.com]
Sent: Friday, May 11, 2007 4:48 PM
To: Murawski, Michael P. (COE)
Cc: murawsk@miami-dade.gov
Subject: Request for Ethics Opinion

Michael:

As we discussed on the telephone, the City of Miami is interpreting the definition of "lobbyist" under Section 2-11.1(1)(b) as applicable to the principal (or owner) of the entity seeking approval of an application before the City Commission in a quasi-judicial proceeding. Specifically, they are relying on the portion of the definition which states: "Lobbyist" specifically includes the principal . . ." That portion however appears to apply to the principal of a lobbying firm, especially in light of the first sentence of the section which states: ""Lobbyist" means all persons, firms, or corporations *employed or retained by a principal* who seeks to encourage the . . ." (emphasis added). The two sections appear to be contradictory in that on the one hand, a lobbyist is defined as those employed by a principal, while on the other, the principal himself is considered a lobbyist, even though he himself is not technically employed (instead he is the one employing others).

The principal involved is a part-owner of the applicant entity and was disclosed as such in the application for zoning relief that is part of the record of the hearing.

The City's interpretation is especially odd in the context of quasi-judicial proceedings, in that the aforementioned subsection specifically excludes "attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications." Under the City's interpretation, an attorney (or other de facto lobbyist) employed by the principal would not have to register as a lobbyist, but the principal would. This seems at odds with the intent of the ordinance. Please confirm whether this interpretation is correct and whether a principal must register as a lobbyist.

Any clarification the Commission can give would be greatly appreciated.

Thanks, and please feel free to call me if you have any questions.



Tony Recio, Esq.

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700

5/21/2007

Coral Gables, FL 33134

TRecio@wsh-law.com

Tel: (305) 854-0800

Fax: (305) 854-2323

This message, together with any attachments, is intended only for the addressee. It may contain information which is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use, or any action or reliance on this communication is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by telephone (305) 854-0800 or by return e-mail and delete the message, along with any attachments.

From: Hannon, Todd [mailto:thannon@ci.miami.fl.us]**Sent:** Friday, May 11, 2007 11:25 AM**To:** Tony Recio**Subject:**

Hi Tony:

Attached is a copy of the Miami-Dade County Code that pertains to lobbyists. In particular, Sec. 2-11.1(s)(1)(b) addresses the issue of the lobbyist designation being assigned to principals. I went ahead and included the URL for Municode that will allow you to review the portion of the Miami-Dade County Code that pertains to principals as lobbyists.

Click on this link for the Municode version of the Miami-Dade County Code:

<http://www.municode.com/resources/gateway.asp?pid=10620&sid=9>

Additionally, you will find a legal opinion issued by the City Attorney for the City of Miami that pertains to the designation of a principal as a lobbyist. Finally, the City of Miami's lobbyist registration form can be downloaded from the City Clerk's website by going to http://www.ci.miami.fl.us/City_Clerk/pages/lobbyist/lobbyist.asp. Let me know if you have any additional questions.

Take care.

Todd Hannon
Legislative Services Representative
Office of the City Clerk
City of Miami
W: 305-250-5360
F: 305-858-1610
email: thannon@ci.miami.fl.us

5/21/2007