

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

19 West Flagler Street, Suite 820
Miami, FL 33130
frigov@miamidade.gov
phone: 305 350-0601
fax: 305 579-0273

May 24, 2007

Bradley H. Trushin, Esq.
Koch & Trushin, P.A.
110 E. Broward Blvd., Suite 1630
Fort Lauderdale, FL 33301

Via email at trushin@k-tlaw.com

RE: Your File № 9388, Robert Coleman
COE File № INQ 07-71

Dear Mr. Trushin:

You asked on behalf of your client, Robert Coleman, about the applicability of the two-year rule¹ to Mr. Coleman's activities as a private consultant in zoning and development matters in the City of Miami Gardens.

You state that Mr. Coleman concluded his employment as a Zoning Administrator with the City of Miami Gardens in October 2006. From that time through to October 2008, Mr. Coleman may not lobby City of Miami Gardens officials and employees, but he may submit routine ministerial requests and applications and he may respond to routine questions posed to him by staff.

In your letter of May 15, 2007, you described several tasks conducted by Mr. Coleman that are routine and ministerial—*i.e.*, determining appropriate zoning applications to file, filling out applications based on information provided by clients, and filing applications.

In addition to these activities, Mr. Coleman may also communicate with staff to ask about general procedural matters, such as confirming receipt of permit applications, inquiring about the status of submitted applications, and seeking to identify the basis for rejected applications. *However, attempting to encourage or persuade city officials or employees to take specific actions on these matters is lobbying² and prohibited under the two-year rule.*

¹ Miami-Dade County Conflict of Interest & Code of Ethics Ordinance at § 2-11.1 (q).

² A lobbyist is defined as someone who seeks to encourage the passage, defeat, or modification of any action or decision of officials or personnel during the time period of the entire decision-making process. Id. at § 2-11.1 (s).

Several past opinions of the Ethics Commission may guide Mr. Coleman in distinguishing routine ministerial activities from lobbying activities.³ Examples of prohibited lobbying activities include *attempting to persuade officials or staff*—

- that a project does not require a specific permit, plan review, or inspection
- to expedite applications and plans for permits
- to reinstate expired permits or process numbers
- to void tickets or close enforcement cases
- to perform non-scheduled inspections
- to assign specific inspectors or plan reviewers to projects
- by representing building code violators at ticket appeal hearings
- by negotiating settlement agreements with department staff on unsafe structures or ticket cases
- by offering to make modifications to plans so that the plans will be approved more expeditiously.⁴

The list above is not inclusive. However, these are representative activities considered to be lobbying unless the city has implemented specific procedures to completely eliminate anyone's discretionary authority to act. For example, staff would have no ability to act if additional expediting fees were the only method to speed up the application process, or if a computerized distribution process randomly assigned inspectors to projects. *Attempting to circumvent established department procedures in order to persuade officials or government personnel to take a different course of action is lobbying.*

I hope this information is helpful to Mr. Coleman. If you have any additional questions, please do not hesitate to call me.

Sincerely,

Via email

Victoria Frigo
Staff Attorney

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

³ RQO 00-12; RQO 01-38; RQO 03-120; RQO 04-33; RQO 04-34; RQO 04-48; RQO 04-106; and RQO 04-148.

⁴ Only licensed design professionals and architects may legally make changes to plans.

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Thursday, May 24, 2007 11:17 AM
To: 'trushin@k-tlaw.com'
Cc: Murawski, Michael P. (COE)
Subject: INQ 07-71 Coleman

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May 24, 2007

Bradley H. Trushin, Esq.
Koch & Trushin, P.A.
110 E. Broward Blvd., Suite 1630
Fort Lauderdale, FL 33301

Via email at trushin@k-tlaw.com

RE: Your File № 9388, Robert Coleman
COE File № INQ 07-71

Dear Mr. Trushin:

[1]

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5/24/2007

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In your letter of May 15, 2007, you described several tasks conducted by Mr. Coleman that are routine and ministerial—*i.e.*, determining appropriate zoning applications to file, filling out applications based on information provided by clients, and filing applications.

In addition to these activities, Mr. Coleman may also communicate with staff to ask about general procedural matters, such as confirming receipt of permit applications, inquiring about the status of submitted applications, and seeking to identify the basis for rejected applications. *However, attempting to encourage or persuade city officials or employees to take specific actions on these matters is lobbying* [2]

and prohibited under the two-year rule.

Several past opinions of the Ethics Commission may guide Mr. Coleman in distinguishing routine [3]

ministerial activities from lobbying activities. Examples of prohibited lobbying activities include *attempting to persuade officials or staff*—

- that a project does not require a specific permit, plan review, or inspection
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- by negotiating settlement agreements with department staff on unsafe structures or ticket cases
- by offering to make modifications to plans so that the plans will be approved more

[4]

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The list above is not inclusive. However, these are representative activities considered to be lobbying unless the city has implemented specific procedures to completely eliminate anyone's discretionary authority to act. For example, staff would have no ability to act if additional expediting fees were the only method to speed up the application process, or if a computerized distribution process randomly assigned inspectors to projects. *Attempting to circumvent established department procedures in order to persuade officials or government personnel to take a different course of action is lobbying.*

I hope this information is helpful to Mr. Coleman. If you have any additional questions, please do not hesitate to call me.

Sincerely,

Victoria Frigo
Staff Attorney

5/24/2007

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

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- [1] Miami-Dade County Conflict of Interest & Code of Ethics Ordinance at § 2-11.1 (q).
- [2] A lobbyist is defined as someone who seeks to encourage the passage, defeat, or modification of any action or decision of officials or personnel during the time period of the entire decision-making process. Id. at § 2-11.1 (s).
- [3] RQO 00-12; RQO 01-38; RQO 03-120; RQO 04-33; RQO 04-34; RQO 04-48; RQO 04-106; and RQO 04-148.
- [4] Only licensed design professionals and architects may legally make changes to plans.

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BRADLEY H. TRUSHIN, ESQ.

Reply to Fort Lauderdale Office

May 15, 2007

Ms. Victoria Frigo
Miami-Dade County
Commission of Ethics and Public Trust
19 W. Glagler Street, Suite 820
Miami, Florida 33130

Re: *Request for Ethics Opinion*
Our Client: Robert Coleman
Our File No: 9388

Dear Ms. Frigo:

This firm represents Robert Coleman. Mr. Coleman has requested that I prepare this request for an ethics opinion on his behalf. Mr. Coleman was Zoning Administrator for the City of Miami Gardens until his resignation in October, 2006. Mr. Coleman subsequently formed a company for the purpose of providing consulting services relating to zoning and development. As part of that process, Mr. Coleman determines the appropriate zoning applications for his clients' needs, fills out the applications based on information provided by his clients, and files the applications. Mr. Coleman is not a lobbyist, he is not retained by his clients as a lobbyist, and he does not lobby public officials in conjunction with the foregoing activities.

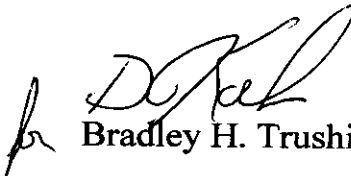
Recently, Mr. Coleman was retained by a client to obtain permitting to operate a commercial parking lot in the City of Miami Gardens. He made an inquiry to a City of Miami Gardens employee in zoning concerning the nature of the permit that would be required. He was advised in regard to the particular permit that would be necessary. He obtained the appropriate information and documents from his client, and submitted the application. Mr. Coleman was advised that the application would not be accepted because additional approvals

Ms. Victoria Frigo
Miami-Dade County
Commission of Ethics and Public Trust
May 15, 2007
Page 2

were necessary for this particular permit due to the nature of a special event taking place in the City on that date. Mr. Coleman did not question the unusual nature of the additional approvals, and attempted to obtain the same, in conjunction with his client. Additional approvals were obtained and submitted, but the City refused to accept the application. Mr. Coleman inquired as to the basis for the refusal to accept the application, so that he could attempt to meet any requirements imposed by the City. The application was never accepted by the City, and Mr. Coleman's client instituted litigation against the City arising out of its refusal to accept the application.

Mr. Coleman respectfully requests an opinion concerning the applicability of the "two year rule" in the Conflict of Interest Code of Ethics Ordinance, §(q). While the foregoing circumstances are certainly unusual and perhaps unique, Mr. Coleman would like an opinion concerning his conduct in the event that a similar issue arises again with the City of Miami Gardens. Mr. Coleman wishes to be certain that his conduct in this matter does not in any way amount to lobbying which would be prohibited by the two year rule. Mr. Coleman will conduct his future activities in conformance with the opinion of the Ethics Commission. On behalf of Mr. Coleman, your consideration of this request is greatly appreciated. Should you have any questions, please feel free to contact me.

Very truly yours,


Bradley H. Trushin

BHT/dld

cc: Robert Coleman
Michael P. Murawski



COMMISSION ON ETHICS

ADVISORY OPINION RQO 00-12

BACKGROUND: _____, a former Department of Environmental Resources Management (DERM) employee, is seeking an advisory opinion regarding any restrictions on his ability to contract with companies who conduct business with DERM.

FACTS: _____ is currently president of Coastal Environmental Consulting, Inc. During his County employment, _____ worked as a biologist for DERM and conducted biological evaluations of projects that were seeking new permits.

In his new company, _____ will assist companies who are seeking permits from DERM. _____ will answer questions from DERM regarding the permit applications and other information needed to process the application.

ARGUMENT: The Conflict of Interest and Code of Ethics Ordinance permits _____ to work with companies doing business with the County as long as he does not lobby any county officials. Section 2-11.1 (q) restricts former employees from lobbying Miami-Dade County in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or particular subject matter in which Miami-Dade County or one of its instrumentality has any interest whatsoever, direct or indirect. Therefore, _____ may advise companies of permit requirements and conduct necessary biological evaluations but he may not lobby any department official in regard to permit applications by his clients.

CONCLUSION: The Conflict of Interest and Code of Ethics Ordinance permits _____ to contract with county contractors in regard to DERM permit applications but he may not lobby county officials regarding the permits.

April 5, 2001

RE: REQUEST FOR ADVISORY OPINION 01-38

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 4, 2001 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the employment restrictions created by the two-year rule on a new associate.

In your letter, you advised the Commission that you recently hired _____ as an associate. _____ worked for six months as an aide to Commissioner _____. Your law firm specializes in governmental and administrative law. Although the bulk of the firm's county lobbying activity will be undertaken by other employees, you want to know if _____ can attend meetings and provide administrative support if he does not actively participate in advocacy on behalf of the client.

The Commission found _____ may not participate in any activities where he is part of the lobbying team advocating on behalf of the principal. Section 2-11.1(q) provides that "no person who has served as an elected official, i.e. mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall for a period of two years after his or her county employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one of its agencies or instrumentalities is a party or has any interest whatever, whether, direct or indirect." The Conflict of Interest and Code of Ethics ordinance defines lobbying as seeking to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of any County board or committee; or 3) any action, decision or recommendation of County personnel which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

The two-year rule's prohibition against lobbying by former officials and employees is broad and would cover any activity where the employee attends meetings and is publicly identified as part of a lobbying team employed by the principal. Like the members of a selection committee who are required to register whether or not they speak during the presentation, attendance at meetings as a member of the team on behalf of the principal would constitute lobbying. Therefore, _____ may not attend meetings with county staff or commissioners as part of the lobbying team.

However, _____ can attend quasi-judicial hearings and county commission meetings and provide administrative support if he is not publicly identified as a member of the lobbying team.

Further, _____ may research items and request documents because Section 2-11.1(q) permits former employees to make routine administrative requests.

Therefore, Section 2-11.1(q)(1) permits _____ to attend quasi-judicial hearings and county commission meetings and provide administrative support but prohibits _____ from attending meetings with county staff or commissioners as part of a lobbying team representing the principal.

Memo

To: Luisa Millan-Donovan
Chief, Professional Services Division
Capital Improvements Construction Coordination

From: Ardyth Walker
Staff General Counsel

Date: August 27, 2003

Re: Request for Advisory Opinion- RQO 03-120

I received your request for an advisory opinion regarding the definition of lobbying and whether a meeting between the principal of an architectural/ engineering firm and CICC staff to discuss the company's expertise and how to provide professional services to Miami-Dade County requires lobbyist registration.

In other correspondence, you provided additional scenarios including vendor meetings with the staff of the Vendor Information Center (VIC), vendor discussions with the Department Director after public presentations before local Chambers of Commerce and other business and professional organizations regarding doing business with Miami-Dade County and one-on-one meetings with senior level staff to discuss procurement opportunities.

As a general rule, the principal of an AE firm or a vendor is not required to register as a lobbyist to discuss general rules and procedures for responding to solicitations or doing business with Miami-Dade County. However, a principal of an AE firm or a vendor is required to register for any meeting where the vendor or principal is seeking to influence any action of staff.

Under the scenarios presented by your correspondence, the following guidelines would apply:

- A principal of an AE firm or a vendor is not required to register if the purpose of the meeting or discussion with the Department Director or other staff is to discuss general rules and procedures for responding to solicitations or becoming registered as a county vendor.
- A principal of an AE firm or a vendor is not required to register to provide the Department Director or other staff with general information regarding a firm's background or expertise (as long as the principal or vendor is not seeking any action from the Department Director or staff).
- A principal of an AE firm or a vendor is required to register to discuss information regarding a particular solicitation or product (i.e. time frames for the solicitation, specifications, qualifications, etc.). Lobbyist registration is required even if the meeting takes place during the market research phase or during any period of time prior to advertisement, when requested by the principal or vendor, if a particular project or purchase is the purpose of the meeting. Registration is also required if a vendor attempts to sell an unsolicited item.
- A principal of an AE firm or a vendor is required to register if the principal retains a third party to assist him in meeting with staff or arranging introductions. The principal and the lobbyist should register prior to any meetings between principal, lobbyist and staff.
- A principal of an AE firm or a vendor is required to register for any meetings with staff to discuss issues regarding a past or ongoing solicitation.
- A principal of an AE firm or a vendor is required to register for any meeting where the principal or the vendor is seeking to influence staff action regarding a particular matter. Registration is required even if the matter under discussion is a policy issue rather than an issue related to a particular solicitation or purchase.

Finally, although this list addresses some scenarios, it is not intended to be all-inclusive. Moreover, in many instances, a meeting may appear to be scheduled for one purpose and veer into other directions. If you or any other member of the staff has questions regarding a particular meeting, you may call me at 350-0616 for assistance or seek an advisory opinion.

March 11, 2004

Charles Danger
Director, Miami-Dade County Building Department
11805 SW 26th Street, Room 209
Miami, FL 33175-2474

RE: REQUEST FOR ADVISORY OPINION 04-33

Dear Mr. Danger:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your request.

You requested an interpretation of Section 2-11.1 (q) "Continuing application for two (2) years after County service," [commonly referred to as "the two-year rule"] of the Conflict of Interest and Code of Ethics Ordinance as it applies to former employees of the Building Department.

According to the facts submitted in your letter, a number of former Building Department employees have left their County positions and are presently working as consultants, permit expeditors and employees of developers. In addition, some former Building Department employees have opened their own companies, whereby they assist individuals in resolving Building Code violations. While Section 2-11.1 (q) prohibits former County employees from lobbying for a period of two (2) years after leaving County service, the section does not prohibit those employees from submitting routine administrative requests or applications to the County.

You specifically asked the Ethics Commission whether the following activities constitute lobbying or routine administrative requests, as defined under Section 2-11.1 (s) and Section 2-11.1 (q), respectively.

- (1) Former employees, who are presently self-employed, engage in the following activities:
 - Represent building code violators at ticket appeal hearings
 - Negotiate settlement agreements with department staff on unsafe structures cases and ticket cases
 - Interact with department staff in order to obtain building permits for clients

- (2) Former employees, who work for developers, engage in the following activities:
 - Submit permit applications and plans for processing
 - Meet with County staff to discuss the timeliness of plan reviews
 - Meet with County staff to review and to discuss requested modifications to plans as part of the permitting process

Furthermore, you requested information regarding the appropriate procedures and requirements departmental staff should follow when lobbied by former County employees.

Firstly, under Section 2-11.1 (s) of the Conflict of Interest and Code of Ethics Ordinance a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

Section 2-11.1(q)(1) "Continuing application for two (2) years after County service," provides that,

No person who has served as an elected official, i.e. mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall for a period of

two (2) years after his or her county employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether, direct or indirect...Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this subsection from submitting a routine administrative request or application to a county department or agency during the two (2) year period after his or her county service has ceased.

For purposes of this subsection, lobbying by former employees contemplates a broad interpretation and common understanding of the word 'lobbying' by capturing activities and subject matters which may not be precisely outlined by subsection (s) in its definition of "lobbyist."

Issue One:

Regardless of whether the former employee is self-employed or employed by a developer, former employees engaged in activities that entail representation of code violators at ticket appeal hearings and settlement negotiations with County staff on behalf of third parties would clearly constitute lobbying, as it is defined under Section 2-11.1 (s). Those activities are seeking some action, decision or recommendation by County staff on behalf of third parties; they are not considered within the scope of "routine administrative requests." Therefore, in accordance with the two-year rule, the former County employees would be prohibited from engaging in those activities for a period of two (2) years after their County employment has ceased.

Interactions with staff, which may include written or verbal communications, in order to obtain permits for clients, may be considered lobbying, dependent upon the circumstances. Certainly, former employees would be allowed to engage in interactions with staff which are ministerial in nature, such as filing permit applications, obtaining documents or requesting information about a permit.

Previously, the Ethics Commission has opined that the two-year rule's prohibition is broad. [See, RQO 01-38] Communications and activities, whereby former employees are trying to persuade County staff on a particular course of action or to make some determination, are considered lobbying. For example, in RQO 02-139, the Ethics Commission concluded that a former city employee was not permitted to seek a zoning modification from a City planning board, or to persuade a City official to take a particular course of action related to his new employment with a developer.

✓ find it

Issue Two:

You outlined additional activities former Building Department employees are engaged in on behalf of developers in their post-County employment. Under the Code of Ethics Ordinance, former County employees are not prohibited from submitting routine administrative requests or applications. You indicated that former employees visit the department on a daily basis to submit permit applications and plans. Under the two-year rule, this activity falls within the scope of routine administrative requests or applications. In previous opinions, the Ethics Commission determined that the two-year rule did not prohibit former County and city employees from providing information to government personnel, submitting applications and requesting and researching items as part of administrative requests since these actions were regarded as ministerial in nature. [See, RQO's 00-145; 01-38; 02-139]

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However, activities that entail meetings with County staff to discuss the timeliness of plan reviews or requested modifications to plans or permits may be considered lobbying, and therefore, deemed impermissible under the two-year rule. This determination would be made on a case-by-case basis. For example, if the former employee, on behalf of a third party, meets with Building Department officials to explain the reasons [technical, structural, financial, etc...] for certain building plans and at the same time tries to persuade those officials to expedite the review process and/or offers to make some modifications to plans so that they can be approved more expeditiously, the former employee would be engaged in lobbying. As you indicated, most of the meetings occur with Building

Department officials who have the authority to make decisions or take some official action.

On the other hand, if the former employee meets with staff to ask only a procedural question, such as confirming receipt of plans and permit applications or inquiring about the status of the submitted plans, this type of activity would not be considered lobbying, but rather a routine administrative matter.

Lastly, the Code of Ethics, and more specifically Section 2-11.1 (q), does not address the responsibility of department staff when lobbied by former County employees. However, as a recommendation, County staff, at minimum should ask former employees when they left their County employment. If the former employees are still within the two-year period, staff may inquire whether they have requested an opinion from the Ethics Commission regarding post-County employment activities, some of which may include lobbying. Department staff always have the prerogative to refuse to meet with former employees if they believe they have been lobbied or will be lobbied by former employees.

Additionally, any employee or former employee may always contact the Ethics Commission to discuss the application of the Code of Ethics as it relates to their individual situation or to discuss potential violations of the Ordinance.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

March 11, 2004

Danny Alvarez
Director, Transportation Industry Program
CSA Group
100 Miracle Mile, Suite 300
Coral Gables, FL 33134

RE: REQUEST FOR ADVISORY OPINION 04-34

Dear Mr. Alvarez:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your request.

You requested an advisory opinion clarifying the restrictions and possible conflicts related to your current employment with CSA Group.

According to the facts submitted in your letter, you are employed with CSA Group ["CSA"], a private engineering firm, which assists private and public entities with such issues as permitting, building inspection and transportation policies and plans.

In November 2003, you requested an opinion from the Ethics Commission seeking an interpretation of the post-County employment restrictions and conflicts of interest with regard to your employment with CSA. In that inquiry, 03-115, Ethics Commission staff advised you that Section 2-11.1 (q) [commonly referred to as "the two-year rule"], prohibited you from lobbying the County for a period of two (2) years after your County employment has ceased. The inquiry also stated that the two-year lobbying prohibition did not preclude CSA from lobbying the County; however, you may not be identified or participate as part of the firm's lobbying team.

Moreover, the inquiry advised you that you were not precluded from assisting and advising CSA's municipal clients on their transportation plans or submitting routine administrative requests on their behalf; however you could not lobby the County on behalf of those entities for a period of two (2) years after your County employment has ceased.

Since the County has begun issuing solicitations for the types of services provided by CSA, you requested further clarification as to the permissible activities you may engage in on behalf of CSA and its clients. Furthermore, you asked whether on behalf of CSA you may arrange and/or participate in meetings between County staff and CSA and its professional partners for purposes of discussing upcoming business opportunities and procedures for transacting business with the County.

Under the Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(q)(1) "Continuing application for two (2) years after County service," provides that,

No person who has served as an elected official, i.e. mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall for a period of two (2) years after his or her county employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether, direct or indirect...Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this subsection from submitting a routine administrative request or application to a county department or agency during the two (2) year period after his or her county service has ceased.

Section 2-11.1 (s), "Lobbying" of the Conflict of Interest and Code of Ethics Ordinance states that a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action

or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

Accordingly, you are prohibited from making presentations before County Selection Committees, County boards and agencies, the Board of County Commissioners and its boards, committees and subcommittees. This prohibition is broad and covers any activity where you attend meetings and are publicly identified as part of CSA's lobbying team. [See RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities, but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team.]

The two-year prohibition however, does not preclude you from participating in the following activities:

- Advising CSA clients about County regulations and other policies relevant to CSA's clients
- Having your name appear on the firm's letterhead and Table of Organization
- Including your resume and qualifications in proposals and solicitation applications submitted to the County on behalf of CSA and its clients
- Submitting routine administrative requests or applications on behalf of CSA clients, that are solely ministerial, such as filing documents or requesting records [See RQO 03-35]
- Appearing before municipal councils, boards, agencies and committees or meeting with municipal staff on behalf of CSA

✓ fund

In addition, the Code of Ethics does not entirely restrict your participation in meetings with County staff on behalf of CSA and its professional partners. You may inquiry about procurement procedures and practices within the County. Also, you may introduce CSA employees and partners to County staff and arrange meetings between

County staff and CSA to obtain information about generic procurement procedures and opportunities. However, you would be prohibited from arranging and participating in meetings between County staff and CSA and its professional partners in the following instances:

- If the meetings are convened for the purpose of seeking some type of action or decision from the County Commission, County Manager, board or committee
- If the meetings are convened for the purpose of persuading County personnel to take a particular course of action with regard to any issue which may come before the County Commission or any county board or committee [See RQO 00-145]
- If the meetings are designed to discuss client projects/proposals or make some determinations with regard to client projects/proposals
- If you arrange meetings, even if only in a liaison capacity and do not attend, so that CSA can advocate on behalf of itself or on behalf of its clients regarding solicitations and other business opportunities

In conclusion, the two-year rule prohibits you from lobbying the County for a period of two (2) years after your County employment has ceased. This would be October 31, 2005. However, you are not precluded from submitting routine administrative requests or applications, such as filing documents or requesting information.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

April 8, 2004

Donna Romito
Miami-Dade County Building Department
11805 SW 26th Street, Room 209
Miami, FL 33175-2474

RE: REQUEST FOR ADVISORY OPINION 04-48

Dear Ms. Romito:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 7, 2004 and rendered its opinion based on the facts stated in your request. This request arises from an opinion rendered last month by the Ethics Commission, RQO 04-33, which identified activities that constitute lobbying or routine administrative requests by former building department employees.

In the instant matter, you requested further clarification of the lobbying provisions under the Conflict of Interest and Code of Ethics Ordinance as they pertain to the activities of permit or plans expeditors and consultants in the Building Department, who are not former building department employees.

Also, you requested information regarding the duties of departmental staff to ascertain the registration status of those permit or plans expeditors and consultants who are considered lobbyists.

Additionally, you asked whether the term "employees," as defined under Section 2-11.1 (b)(6), includes the following individuals, and therefore would make them subject to the provisions of the Conflict of Interest and Code of Ethics Ordinance:

- Part-time employees
- Temporary full-time employees directly hired by the County
- Temporary full-time employees directly hired by employment agencies

In your letter to the Ethics Commission, you asked whether the following activities would be considered lobbying, as defined under the Code of Ethics, thereby, requiring permit or plans expeditors and consultants to register as lobbyists with Miami-Dade County when engaged in such activities.

- 1) Attempting to persuade staff that an application and plans for a permit should be expedited
- 2) Attempting to persuade staff that a non-scheduled inspection should be performed
- 3) Attempting to persuade staff to assign a specific inspector or plan reviewer to a project
- 4) Attempting to persuade staff that an expired permit or process number should be re-instated
- 5) Representing building code violators at ticket appeal hearings
- 6) Negotiating settlement agreements with department staff on unsafe structure or ticket cases
- 7) Offering to make modifications to plans so that they can be approved more expeditiously
- 8) Trying to persuade staff that a permit, plan review or inspection is not required for a project
- 9) Trying to persuade staff that a ticket should be void or an enforcement case closed

Under Section 2-11.1 (s) of the Conflict of Interest and Code of Ethics Ordinance a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

Firstly, as explained in several previous Ethics Commission opinions, activities that are routine or ministerial in nature

are not considered lobbying. [See, RQOs 00-145; 01-38; 02-139] These activities would include filing permit applications, obtaining documents, requesting information about a permit or plan or researching items as part of administrative requests. Communications with staff to ask only a procedural question, such as confirming receipt of plans and permit applications or inquiries about the status of the submitted plans, also would not be considered lobbying.

In this opinion, the Ethics Commission determined that the above-delineated activities constitute lobbying. In accordance with the RQO 04-33, the activities listed under numbers one (1); five (5); six (6); seven (7); and nine (9) clearly constitute lobbying.

With regard to the remaining delineated activities, Building Department officials note that those activities may be considered routine only in the sense that they occur with great regularity. The activities, which include persuading staff to perform a non-scheduled inspection; assigning a specific inspector to a project; reinstating an expired permit or persuading staff that an inspection is not required, numbers two (2), three (3), four (4) and eight (8), respectively, are handled by personnel who can be influenced to use their discretion and authority to make official decisions. Such discretion undermines the ministerial character of the activity or duty. In particular, Department officials indicate that these activities usually require the approval or review of senior departmental staff.

Additionally, County employees have an affirmative duty to ascertain the registration status of persons required to register as lobbyists. Section 2-11.1 (s)(10) provides,

All members of the County Commission, and all County personnel, shall be diligent to ascertain whether persons required to register pursuant to this subsection have been complied. Commissioners or County personnel may not knowingly permit a person who is not registered pursuant to this subsection to lobby the Commissioner, or the relevant committee, board or County personnel.

Accordingly, Building Department personnel satisfy this requirement by asking permit or plans expeditors and consultants engaged in lobbying whether they have

registered with the County as lobbyists. They may rely on the verbal representation of the lobbyist. If the lobbyist indicates that he or she is not registered, the employee may not allow that person to lobby departmental staff. Moreover, the department may post notices reminding lobbyists of the registration requirement and may post signs outlining the activities considered lobbying.

Lastly, the Ethics Commission deferred their opinion with regard to the definition of the term "employees." They directed legal staff to study the issue further for reconsideration at the next monthly Ethics Commission meeting.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

June 11, 2004

Thomas M. David
13725 SW 73 CT
Miami, FL 33158

RE: REQUEST FOR ADVISORY OPINION 04-106

Dear Mr. David:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 10, 2004 and rendered its opinion based on the facts stated in your request.

According to the facts submitted in your letter, you were employed by the County from March 26, 2001 until June 12, 2003. Initially, the County Manager's office employed you as an Executive Assistant to the County Manager; however, on July 5, 2001 your title was changed to Assistant County Manager.

As indicated in your request, you would like to lobby [as the term is defined under the Conflict of Interest and Code of Ethics Ordinance] the County and its various departments on behalf of individuals and business entities. You argue, inter alia, that you are not precluded from lobbying under the two-year rule given that subsection (q) of the Code of Ethics does not mention specifically your former job classification with the County.

The Ethics Commission concluded that you are prohibited from lobbying Miami-Dade County and its various entities for a period of two (2) years after your County employment has ceased. This would be June 12, 2005.

Under the Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(q)(1) "Continuing application for two (2) years after County service," provides that,

No person who has served as an elected official, i.e. mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall for a period of two (2) years after his or her county employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether, direct or indirect...Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this subsection from submitting a routine administrative request or application to a county department or agency during the two (2) year period after his or her county service has ceased.

Section 2-11.1 (s), "Lobbying" of the Conflict of Interest and Code of Ethics Ordinance states that a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

Therefore, you are prohibited from making presentations on behalf of third persons and business entities before County Selection Committees, County boards and agencies, the Board of County Commissioners and its boards, committees and subcommittees. This prohibition is broad and covers any activity where you are publicly identified as part of a lobbying team. [See RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities, but was not prohibited from attending quasi-judicial hearings and County Commission

meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team.] However, the provision does not preclude you from submitting routine administrative requests or applications, such as filing documents or requesting information.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

August 24, 2004

Truly Burton
Government Affairs Director, Miami-Dade County
Builders Association of South Florida
15225 NW 77 Avenue
Miami Lakes, FL 33014

RE: REQUEST FOR ADVISORY OPINION 04-148

Dear Ms. Burton:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on August 18, 2004 and rendered its opinion based on the facts stated in your request. This request, on behalf of the Builders Association of South Florida ["BASF"], arises from two previous opinions rendered by the Ethics Commission, RQO 04-33 and RQO 04-48, which identified the following nine (9) activities conducted by plan expeditors that constituted lobbying:

- 1) Attempting to persuade staff that an application and plans for a permit should be expedited
- 2) Attempting to persuade staff that a non-scheduled inspection should be performed
- 3) Attempting to persuade staff to assign a specific inspector or plan reviewer to a project
- 4) Attempting to persuade staff that an expired permit or process number should be re-instated
- 5) Representing building code violators at ticket appeal hearings
- 6) Negotiating settlement agreements with department staff on unsafe structure or ticket cases
- 7) Offering to make modifications to plans so that they can be approved more expeditiously
- 8) Trying to persuade staff that a permit, plan review or inspection is not required for a project

*redefining
these
parameters
not
circled*

- 9) Trying to persuade staff that a ticket should be void or an enforcement case closed

In the instant matter, BASF requested that the Ethics Commission reconsider whether some those above-mentioned activities are lobbying as previously opined. Specifically, you indicate that while BASF agrees with the conclusion that the activities identified in numbers 5,6, and 9 constitute lobbying, the remaining activities identified in numbers 1,2,3,4,7 and 8 do not.

According to the facts submitted in the letter, plan expeditors represent clients, who are builders, homeowners or owner's representatives, and assist them in moving building plans through the approval process until completion. BASF states that the activities identified in numbers one (1) through four (4), which include persuading staff that a permit application should be expedited, that a non-scheduled inspection should be performed, that a specific plan reviewer should be assigned to a project and that an expired permit should be re-instated are governed by specific procedures established by the Building Department. For instance, departmental policy prohibits plan expeditors to speak directly with Building Department plan reviewers to request expedited service. Such service is administered through the department's Optional Plans Review Procedure, which requires additional fees.

Furthermore, BASF states that the Building Department has additional processes and procedures established to administer matters such as, non-scheduled inspections, the assignment of specific inspectors and the expired permits. For example, regarding the assignment of inspectors or plan reviewers, BASF notes that the County has a computerized random plan distribution process so that plan expeditors cannot contact plan reviewers or request certain reviewers, and consequently, staff cannot be persuaded or 'lobbied' to assign a specific inspector to a project.

Lastly, BASF notes that these following two activities-offering to make plan modifications for expeditious approval and persuading staff that an inspection is not required [#7 and #8, respectively]- are not conducted by plan expeditors, but rather by design professionals/architects. Again, BASF states that it is

illegal for a plan expediter to make changes to plans and that the Florida Building Code and Building Department policy determine whether and what types of inspections are required; consequently, department staff cannot be "persuaded" to take one course of action over another.

Under Section 2-11.1 (s) of the Conflict of Interest and Code of Ethics Ordinance a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

As previously opined by the Ethics Commission, clearly where plan expediters are representing clients at ticket appeal hearings, negotiating unsafe structure cases and representing third parties on other enforcement matters, then said expediters are lobbying and required to register as such in accordance with the Code of Ethics. As noted in RQO 04-33, these activities are seeking some action, decision or recommendation by County staff on behalf of third parties; they are not considered within the scope of "routine administrative requests."

With regard to the activities outlined in numbers 1,2,3,4,7 and 8, BASF indicates that these activities are governed by specific departmental policies and procedures which staff must abide by and which are not subject to change by staff discretion. In other words, if a plan expediter requests expedited service, such service will be provided with a required additional fee; moreover, departmental policy prohibits plan expediters from contacting any department plan reviewer during this process.

The Ethics Commission concluded that since the Building Department has established procedures and policies which curb the authority and discretion staff may exercise with regard to the activities outlined in numbers 1,2,3,4, 7 and 8, the activities do not constitute lobbying. Evidently, these

procedures are designed to make these activities more routine and administrative in nature.

However, said plan expeditors would be lobbying if they tried to circumvent established department procedures and processes in order to persuade officials to take a course of action regarding the following activities:

- Expedited permit applications
- Performance of non-scheduled inspections
- Assignment of specific plan reviewer or inspectors to a project
- Reinstatement of expired permits
- Permit, plan review or inspection requirements
- Plan modifications

Accordingly, department officials would be prohibited from communicating with said plan expeditors until they have registered as lobbyists.

Further, communications with staff to ask only a procedural question, such as confirming receipt of plans and permit applications, inquiring about the status of the submitted plans or responding to questions or suggestions about plan designs, also would not be considered lobbying. As noted in the request, it is illegal for plan expeditors to make modifications to plans, although they may accompany design professionals during their meetings with County plan review personnel.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director