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STAFF GENERAL COUNSEL

August 25, 2009

Ruben Valdes
2015 NW 20th St.
Miami, FL 33142

Via First Class Mail and email at acai@bellsouth.net

RE: INQ 09-140 Ethics opinion regarding membership on the Mayor's
International Council and board membership with Allapattah
Community Action, Inc.

Dear Mr. Valdes:

In an email dated August 19, 2009, you asked the Ethics Commission staff if your current service as a member of the board of directors of Allapattah Community Action, Inc., a nonprofit organization, presents any ethics conflicts for you based on your concurrent service as a member of the City of Miami Mayor's International Council.

In sum, this is our opinion:

1. Your service on the board of directors of Allapattah Community Action, Inc., does not prevent Allapattah Community Action, Inc., from entering into contracts with the City of Miami because you have no ownership interests in Allapattah Community Action, Inc., a nonprofit organization.
2. If the Mayor's International Council were to vote on matters related to Allapattah Community Action, Inc., you would be required to recuse yourself if you would be directly affected by the vote and, at the same time, you are a director on the board of Allapattah Community Action, Inc., or hold any other position enumerated in the County Code.

FACTS

We understand that you serve on the board of directors of Allapattah Community Action, Inc., a nonprofit organization. You also serve as a member of the Mayor's International Council, which plans and implements the City's international trade promotion policies.

Allapattah Community Action, Inc., recently entered into a contract with the City of Miami. The transaction involved the sale of a newly constructed rental development by the City of Miami to Allapattah Community Action, Inc., at below-market price. The development, called Allapattah Community Housing II, is designed for low- to moderate-income seniors.

LEGAL ANALYSIS
REGARDING DOING BUSINESS WITH THE CITY

Under the County Code at § 2-11.1 (c)(3), a city advisory board member is not allowed to enter into a contract with the city, individually or through a business entity in which he has a controlling financial interest, if the contract would be “subject to the regulation, oversight, management, policy setting or quasi-judicial authority” of the board of which he is a member. Because the laws regulating nonprofit corporations do not allow financial ownership interests in nonprofits such as Allapattah Community Action, Inc., you do not have a financial interest in Allapattah Community Action, Inc., and, therefore, you do not have a conflict under this part of the County Code.

The City of Miami Conflicts of Interest Code at § 2-612 (a) states that no board member “shall enter into any contract or transact any business with the city or any person or agency acting for the city...” Two Miami City Attorney Legal Opinions clarify this prohibition to include any entity in which the board member or his immediate family has an ownership interest.¹ Again, because no ownership interest is possible in a nonprofit organization, you have no ownership interest in Allapattah Community Action, Inc., and, therefore, you have no conflict under this part of the City Code.


LEGAL ANALYSIS
REGARDING VOTING

Under the County Ethics Code at § 2-11.1 (v), as a member of the Mayor’s International Council, you may not vote on matters related to Allapattah Community Action, Inc., if you will be directly affected by the vote and you are an “officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary” or “stockholder, bondholder, debtor or creditor” of the Allapattah Community Action, Inc.

A thorough discussion of conflicts of interest relevant to City of Miami advisory board members is contained in the City Attorney’s Memorandum No. 08-440. A copy is attached for your convenience.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance and the City of Miami Conflicts of Interest Code, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Sincerely,


VICTORIA FRIGO
Staff Attorney

attachment: City Attorney’s Memorandum No. 08-440
copy: Dennis Johnson, Contract Compliance Analyst
City of Miami Department of Community Development
DeJohnson@miamigov.com

¹ See Miami City Attorney Legal Opinions № 05-05 and № 08-002.