



September 2, 2009

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ARDYTH WALKER
STAFF GENERAL COUNSEL

Mariano Cruz
1227 NW 26th St.
Miami, FL 33142

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

RE: INQ 09-150 Ethics opinion regarding membership on the City of Miami Civil Service Board and the City of Miami Homeland Defense/Neighborhood Improvement Bond Program Oversight Board, along with service as interim Chair of the Board of Directors of the Allapattah Business Development Authority, Inc. (ABDA)

Dear Mr. Cruz:

In an email dated August 18, 2009, you asked the Ethics Commission staff if your current service as interim Chair of the Board of Directors of Allapattah Business Development Authority, Inc. (ABDA), a nonprofit organization, presents any ethics conflicts for you based on your concurrent service as a member of two City of Miami boards—the Civil Service Board and the Homeland Defense/Neighborhood Improvement Bond Program Oversight Board.

In sum, this is our opinion:

1. Your service as interim Chair of the Board of Directors of ABDA does not prevent ABDA from entering into contracts with the City of Miami because you have no ownership interests in ABDA, a nonprofit organization.
2. If the Civil Service Board and/or Homeland Defense/Neighborhood Improvement Bond Program Oversight Board were to vote on matters related to ABDA, you would be required to recuse yourself if you would be directly affected by the vote and, at the same time, you are a member of the Board of Directors of ABDA, or hold any other position related to ABDA as enumerated in the County Code.

FACTS

We understand that you serve as interim Chair of the Board of Directors of Allapattah Business Development Authority, Inc. (ABDA), a nonprofit organization whose charitable mission is to improve the economic and social wellbeing of a the Allapattah community. Over the last several decades, ABDA has received numerous loans and grants, through and from the City of Miami, to enhance existing commercial properties and to develop affordable residential properties in Allapattah.

You also serve on the following two City of Miami Advisory Boards:

- * Civil Service Board, which makes recommendations regarding amending the City's Civil Rights Rules, adjudicates appeals of alleged violations of the Civil Rights Rules, and generally oversees implementation of the Rules.
- * Homeland Defense/Neighborhood Improvement Bond Program Oversight Board, which makes recommendations regarding various neighborhood

improvement projects and homeland defense preparedness projects funded with general obligation bonds.

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 ABDA, you do not have a financial interest in ABDA, 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 ABDA, 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 two City advisory boards, you may not vote on matters related to ABDA, 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 ABDA.

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.