

February 19, 2009

Rick Herrera, P.E.
DEVELOTEC, INC., Consulting Engineers
7194 SW 47th St.
Miami, FL 33155

Via First Class Mail and Fax at 305 663-9640

Re: **INQ 09-26**, City of Miami Housing and Commercial Loan Committee (HCLC)

Dear Mr. Herrera:

In an email dated February 9, 2009, you requested an ethics opinion regarding possible conflicts based on the following: You have been asked to serve as a member of the City of Miami Housing and Commercial Loan Committee (HCLC). In your private capacity as a registered civil engineer and licensed contractor, you may work from time to time as a subcontractor for an entity that has received economic assistance through HCLC.

UNDER THE COUNTY CODE, you may vote on any matter presented to the committee on which you serve as long as you *will not be directly affected* by the action of the committee *and* you have *none of the following relationships* with any of the persons or entities appearing before the committee: officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor.¹

You have asked specifically about voting to fund HCLC applicants with whom you have worked in the past or may work in the future as a subcontractor. If, at the time of your vote, you have no current contract with these applicants and you have no promise or future arrangement to work for these applicants, you have no voting conflict. If, however, you have a distinct expectation (not remote and speculative) that you will become a subcontractor on their projects, you must recuse yourself from voting.

Please be advised that your professional work as a subcontractor raises several other related issues. First, you may find that your service on the committee is ineffective if you must recuse yourself frequently because of recurring conflicts. Second, if you are not recusing yourself and subsequently working regularly for applicants who have benefited from your vote, an appearance of impropriety is likely to arise. Similar fact patterns have prompted the Ethics Commission to investigate and, on occasion, prosecute individuals who exploited their official position to “secure special privileges or exemptions”² for themselves or others.

¹ Miami-Dade County Code at § 2-11.1 (v).

² Miami-Dade County Code at § 2-11.1 (g).

Please be further advised that this opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance and the City of Miami Conflict of Interest Code only. You may have conflicts under federal regulations related to HUD programs, rules affecting other funding sources, or state ethics laws.

Inquires regarding requirements associated with HUD or other funding sources should be directed to your city attorney. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone 805 488-7864, or <http://www.ethics.state.fl.us>.

If we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

VICTORIA FRIGO
Staff Attorney

Copy:

Ilene Temchin, Assistant City Attorney
City of Miami Office of the City Attorney
444 SW 2nd Ave., 9th Floor
Miami, FL 33130

Fax at 305 400-5302