

Meyers, Robert (COE)

INQ 09-191

From: Meyers, Robert (COE)
Sent: Wednesday, November 25, 2009 1:14 PM
To: 'Aguila, Raul'
Subject: RE: Potential Request for Section 2-11.1(c) Conflict of Interest Opinion

Raul:

Based on our conversation and the information you have provided me, an opinion from the Miami-Dade Commission on Ethics is not required in this case. The transaction in question involves the City of Miami Beach and a 501(c)(3) non-profit agency, the Miami Design Preservation League (MDPL).

Under the county's ethics ordinance a potential conflict is created when a local public official or a member of a local public official's immediate family owns a controlling financial interest in a firm or entity seeking to do business with the official's government. The test for determining a controlling financial interest is at least 10% of the outstanding stock of the firm or company. In this particular case, the daughter of the Mayor of Miami Beach is the interim executive director of MDPL and falls within the definition of immediate family; however, on account of the fact that non-profit agencies do not issue stock, the county's ethics code would not restrict MDPL from entering into a long-term agreement with the City of Miami Beach.

The decision of the Mayor to absent herself from the proceedings whenever this item is discussed is a sound one. By taking such a cautious approach, the Mayor essentially removes the possibility of a charge of exploitation of official position.

If you wish to discuss in greater detail, please feel free to contact me at your convenience.

Thanks,

Robert
Robert Meyers, Executive Director
Miami-Dade Commission on Ethics and Public Trust

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

From: Aguila, Raul [mailto:RaulAguila@miamibeachfl.gov]
Sent: Monday, November 23, 2009 1:01 PM
To: Meyers, Robert (COE)
Subject: FW: Potential Request for Section 2-11.1(c) Conflict of Interest Opinion
Importance: High

Robert:

As you'll note below, I sent this e-mail to you last week, but I must have sent to an old address. I apologize.

Raul

From: Aguila, Raul
Sent: Thu 11/19/2009 6:12 PM
To: 'rmeyers@co.miami-dade.fl.us'
Cc: Smith, Jose; Olin, Jean
Subject: Potential Request for Section 2-11.1(c) Conflict of Interest Opinion

Robert:

Thanks for taking the time to speak to with me earlier today. As we discussed, the following e-mail sets forth the facts regarding my inquiry as to whether Mayor Bower needed to request a conflict of interest opinion from the Ethics Commission related to the following matter.

The City is the owner of the 10th Street auditorium on Ocean Drive, which it operates as a multi-purpose, public recreational facility. The instant issue arises as a result of the City's completion of an extensive capital renovation to the facility; the re-opening of the facility for public recreational use; and the City's desire to enter into a long term (i.e. 15 year) management agreement with Miami Design Preservation League (MDPL), a not for profit, 501c3 corporation, to manage and operate the facility.

The auditorium was constructed in 1953 and has always been owned and operated by the City as a public recreational facility. MDPL has been in a portion of the facility, whether through informal agreement, concession agreement, and (most recently) a management agreement, since 1993. MDPL's prior uses have included space within the facility for its admin. offices and for the operation of an Art Deco Welcome Center and gift shop. It has continuously occupied a portion the premises until the City closed the facility in 2008, to commence an extensive capital renovation and improvement project. With the renovation program now complete, the facility has recently re-opened to the public. MDPL is now in discussion with the City Administration to enter into a long term management agreement with the City, under which the facility would continue to operate as a public recreational facility but would be managed, operated and programmed by MDPL (acting as the City's Manager). The proposed transaction is still in negotiations, but it is expected that a draft agreement will be presented to the City Commission for consideration at its December 9, 2009 meeting.

Marie Hernandez, who is Mayor Bower's daughter, currently serves as MDPL's acting (interim) executive director. She is an employee of MDPL and is compensated directly by MDPL.

At no time to date has Mayor Bower participated in any discussion, nor been present at any meeting relating to the proposed transaction.

In reading the prohibition on transacting business in Section 2-11.1(c)(1) of the County Code (which states that "No person...shall enter into any contract or transact any business,.. in which he or she or a member of his or her immediate family has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement enters in violation of this Subsection shall render the transaction voidable..."), as well as Section 2-11.1(c)(4) (which states that "Any person defined in Subsections (b)(2) through (b)(4)... shall seek a conflict of interest opinion from the Miami-Dade Commission on Ethics and Public Trust ["the Ethics Commission"] prior to submittal of a bid, response or application of any type to contract with the County by the person or his or her immediate family..."), my question to you in our phone conference earlier today was whether-- in interpreting the aforesaid sections (as well as Section 2-11.1(c) as a whole) to the proposed transaction-- the Mayor would have to seek a conflict of interest opinion from the Ethics Commission.

I believe your answer was that Section 2-11.1(c) was intended to apply to FOR PROFIT

entities, where it would be possible for an official or his or her immediate family member to hold a controlling financial interest, versus NOT FOR PROFIT ENTITIES (such as, here, MDPL), where-by definition-it is not possible for anyone to one hold any financial interest- whether controlling or otherwise.

Based on the foregoing, no conflict of interest opinion from the Ethics Commission would be required in the instant case, as the proposed transaction involves a contract with a not for profit entity.

Notwithstanding the above, Mayor Bower will of course continue to abstain from any participation on this matter; and will not participate in any discussion, recuse herself from voting, and excuse herself from chambers when the proposed transaction is considered by the City Commission at its December meeting.

Would you be so kind as to provide me with your brief response, confirming that, based on the facts stated to you (and as set forth above), I have correctly stated your interpretation?

Thank you again for your time and professional courtesy.

Sincerely,

Raul Aguila

MIAMIBEACH

Raul J. Aguila, Deputy City Attorney

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