



ING 10-157

**MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST**

August 27, 2010

Dr. Joel Hoffman
Executive Director
Vizcaya Museum and Gardens
3251 South Miami Avenue
Miami, FL 33129

Dear Joel:

Thank you for your letter dated August 25, 2010 wherein you seek an opinion as to whether The Vizcayans, a 501(c)(3) non-profit organization created to support Vizcaya Museum and Gardens, may pay or reimburse a Vizcaya employee for any fees she might incur to obtain a green card to continue her employment with Vizcaya.

The employee in question is a foreign national who has worked for Miami-Dade County since 2008 and her current visa will expire in March 2011. Given her knowledge and skills, Vizcaya would like to retain her services. The process for applying for and receiving a green card is somewhat cumbersome and fairly costly, and The Vizcayans, to demonstrate its commitment to her, are considering paying directly for these immigration-related expenses or reimbursing the employee for the same.

You wish to know whether the abovementioned arrangements would be in harmony with the provisions of the County's Conflict of Interest and Code of Ethics Ordinance. The first significant point is that the actions of The Vizcayans are not covered by the ethics ordinance, as it is an independent 501(c)(3) organization. Therefore, our office has no authority to comment on the fundraising efforts undertaken by The Vizcayans for the benefit of the employee; however, if the Vizcaya Trust or County employees working for Vizcaya Museum and Gardens were to participate in fundraising activities for this purpose, I would be able to offer you some guidance.

The second issue to address is the benefit which will accrue to the employee based on the actions of The Vizcayans. Without a doubt, the employee will reap a benefit if these expenses are paid directly or if she is reimbursed. The remaining question is whether the county ethics code permits the employee to accept the reimbursement or allows The Vizcayans to pay for these expenses directly. If I classify the reimbursement or direct payment as a gift, the employee would be required to report the value of gift by completing a gift disclosure form – indicating the donor, the amount of the gift, etc. As long as she completes and files said form within the prescribed time frame, she will be in compliance with the County ethics code.

Lastly, and irrespective of my analysis of this matter under the county gift rules, the Internal Revenue Service may take the position that such payment or reimbursement is a taxable event. Therefore, the employee should seek out the advice of a tax professional. Any tax liability is exclusively hers and has no bearing on my opinion that the employee should treat this benefit as a gift in order to comply with the county ethics ordinance.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Meyers', followed by a long horizontal line extending to the right.

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

cc: Tom Logue, Esq., Office of the County Attorney



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August 25, 2010

Mr. Robert Meyers
Executive Director
Miami-Dade County Commission on Ethics
19 West Flagler Street
Suite 820
Miami, FL 33130

Dear Robert:

As we have discussed, I am writing to request your written opinion as to whether Vizcaya Museum and Gardens' private 501(c)(3) support organization, The Vizcayans, can directly pay for or reimburse a Vizcaya employee for any fees she might incur to obtain a green card to continue her employment with Vizcaya.

Vizcaya, as you know, is owned and operated by Miami-Dade County. The aforementioned employee is a foreign national who has worked for Miami-Dade County since 2008. Her current visa will expire in March 2011 and she would like to apply for a green card to continue working at Vizcaya Museum and Gardens.

I have spoken with peer museums and learned that it is not uncommon for an institution to cover immigration fees for highly trained employees, and the employee in question has highly specialized knowledge and skills and is an asset to Vizcaya Museum and Gardens. To replace her would be costly, time consuming, and highly unlikely to yield as qualified a candidate.

It is my understanding, from my conversations with you, that The Vizcayans could either directly pay or reimburse this employee for all fees associated with obtaining her green card so long as she declares this payment or reimbursement as a gift on the appropriate County declaration forms. In addition, I understand that the employee may face tax implications as a result of this gift; however, I assume such liability is hers exclusively.

Thank you for your assistance.

Sincerely,


Dr. Joel M. Hoffman
Executive Director

Delivering Excellence Every Day

Meyers, Robert (COE)

From: Hoffman, Joel (Vizcaya)
Sent: Thursday, August 26, 2010 8:18 AM
To: Meyers, Robert (COE)
Subject: Forgot to Say...

Hi Robert, I forgot to note that, if at all possible, I would be grateful for a prompt reply to my request for an opinion. I am trying desperately to wrap this matter up this week and was planning to include your reply in a discussion with my Assistant County Manager. If that's not possible, of course I understand. Thanks. Joel