



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

August 31, 2011

The Honorable Carlos A. Gimenez, Mayor
Miami-Dade County
111 NW 1st Street, 29th Floor
Miami, FL 33128

Dear Mayor Gimenez:

I have been advised that you are requesting a general ethics opinion pertaining to any potential conflicts arising out of your sons' employment. One of your sons, Carlos J. Gimenez, is employed by the law firm of Becker and Poliakoff, P.A., and the firm's website identifies Mr. Gimenez as an attorney in the Firm's government law and lobbying group, including legislative lobbying, government procurement, land use, zoning code enforcement and permit expediting. Your other son, Julio Gimenez, is employed by MCM, a company which is a contractor at Miami International Airport and periodically bids for other County projects.

Among your many duties as County Mayor, you have the authority to veto legislation adopted by the Board of County Commissioners. Furthermore, as the head of County government, you are generally responsible for the administration of County government and can delegate some of your responsibilities to others. For contract awards under a specified threshold, you have the power to make the final determinations, and for other contract awards, your recommendations are forwarded to the Board of County Commissioners for review and action. You also typically have the authority to administer County contracts including exercising options to renew and options to terminate. Finally, the County Mayor has the authority to place administrative matters, such as resolutions awarding contracts, on the agenda of the County Commission.

The County's Conflict of Interest and Code of Ethics Ordinance contains several relevant provisions that I will cite as I endeavor to address your questions. Section 2-11.1(c) and (d) establish prohibitions against County officials and personnel from transacting business with the County. These prohibitions extend to members of the official's immediate family. A transaction (or contract) between a business employing an official's immediate family member and the County is barred if the family member owns a controlling financial interest in the company. Based on the facts that have been presented to me, neither son's employment would create a conflict of interest under the abovementioned sections. As it relates to Julio Gimenez, he does not maintain an ownership in interest in MCM. Without such an interest, the company may enter into contracts with Miami-Dade County. Insofar as Carlos J. Gimenez is concerned, the law firm of Becker Poliakoff is not a contracting party with Miami-Dade County, and sections (c) and (d) are only applicable when the family member's firm is in privity of contract with the County. Therefore, no conflict of interest is created under (c) and (d) if your son's law firm were to represent a client receiving a County contract.

Section 2-11.1 (g) covers exploitation or attempted exploitation of one's official position. This provision prohibits an official from using his or her official position to secure special privileges or exemptions for himself or herself or others except as permitted by law. Under this section, a decision to award a contract to a company employing an official's family member could be a form of exploitation if there is no basis or justification for making an award or recommending a firm for award. Similarly, exploitation of official position could be found if the official were to be lobbied directly or indirectly by an immediate family member and then the official subsequently supports the position taken by the lobbyist. The question is whether this section of the ethics code allows you to take official action as County Mayor when matters affecting your sons' employers or clients are under consideration by Miami-Dade County government.

With respect to your involvement with MCM related issues, the question turns on whether, or to what extent, you can exercise discretion over contract recommendations, awards, modifications and contract administration including, but not limited to, the exercise of renewal and cancellation provisions as well as change orders, when MCM could be affected directly or indirectly by your actions. If such authority exists then you should delegate this power to another County employee to remove you from the decision-making chain. Further, in those situations where a contract must be approved by the Commission, your designee should seek a commission sponsor for the item.

The analysis of the exploitation section of the ethics code differs slightly regarding your other son. The focus is on Becker Poliakoff's advocacy for a particular position, issue or contract. For example, Becker Poliakoff may wish to lobby for or against a specific piece of legislation that impacts one of its clients. Similarly, Becker Poliakoff may represent a client seeking a County contract or may be retained to represent a client who has a dispute with Miami-Dade County. If your son is not involved in Becker Poliakoff's representation or lobbying efforts, then you would be permitted to exercise the lawful authority vested in you as County Mayor. On the other hand, if Becker Poliakoff were to assign your son to lobby Miami-Dade County on a legislative or contract matter or to appear before a Miami-Dade County board or committee, the difficulty arises when your duties as County Mayor require you to take action. In order to avoid a claim of exploitation of official position, you should not directly or indirectly participate in any recommendation or decision when your son lobbies any arm or instrumentality of Miami-Dade County government. Therefore, you should designate someone else in your office to exercise these powers if this situation were to materialize.

Another section of the ethics code worth noting is section 2-11.1(n). This section precludes an official from participating in any official action directly or indirectly affecting a business in which the official or the official's immediate family has a financial interest. As it relates to Julio Gimenez, it could be argued that he has a financial interest in MCM – as one of its employees – because action taken by Miami-Dade County could have a financial impact on MCM. Thus, to the extent your son has a financial interest in MCM, you should not participate in any official action directly or indirectly affecting this business.

Section 2-11.1(n) may pertain to your actions regarding Carlos J. Gimenez as well. For sake of discussion, I assume that he does not have a financial interest in the parties that he represents. However, his law firm does have a financial relationship with its clients and these relationships could be extended or curtailed depending on your son's advocacy efforts within Miami-Dade County government. Moreover, his financial interests with the law firm could be affected by his successes or failures based on his interactions with Miami-Dade County. Thus, I recommend that you not take part in any actions as County Mayor if your son were to lobby or represent clients who have matters before Miami-Dade County government.

The purpose of the above is to offer you a general assessment of potential conflicts of interest that could occur vis-à-vis your two sons. To the extent you seek to exercise your power under the Home Rule Charter to veto Commission action or recommend the waiver of the competitive process or have any other questions not addressed by this opinion, I recommend that you seek an opinion from the Ethics Commission prior to exercising such powers.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

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