

MEMO

To: File
FROM: Victoria Frigo
DATE: June 16, 2011
RE: INQ 11-96 Rafael Ventura

Rafael Ventura, the City Attorney for Sweetwater, asked if Sec. 2-11.1 (c)(4) applied to the city engineer who wished to contract with the City through his private engineering company.

Mr. Ventura is classifying the city engineer as “autonomous personnel” because the engineer is not, strictly speaking, employed by the City. The engineer was entitled to receive \$1 per year for his services, but he has not received this de minimis payment for several years. The city engineer’s duties are to approve residential plans before they are sent to the building department for permitting.

As per Sec. 2-11.1 (c)(4) of the Ethics Code, the city engineer [“autonomous personnel”] should first obtain an ethics opinion from the Ethics Commission. As autonomous personnel, the city engineer is likely to be prohibited from contracting with the city and, therefore, would need to seek a waiver from the City Commission.

Mr. Ventura said that he would consult with the mayor and possibly recommend that the city engineer bypass obtaining an opinion from the Ethics Commission and go directly to the City Commission to obtain a waiver through a Resolution.

Mr. Ventura’s advice is based on several unique facts in the case, *i.e.*, the city engineer is essentially a “volunteer.” Furthermore, the city has a policy in place to avoid conflicts by hiring two separate engineering firms for capital improvements—one to review plans and the other to execute the work. Therefore, the city engineer would not be approving his own work.

Although not sanctioned by the Ethics Commission, a similar procedure to obtain a waiver without first seeking an ethics opinion was recently suggested on the City of Miami Beach.