

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Thursday, March 07, 2013 4:16 PM
To: 'mdclc@bellsouth.net'
Cc: Frigo, Victoria (COE)
Subject: INQ - Richard Kuper - Conflict of Interest Question

Richard,

You have inquired whether you may serve on a selection committee which will make recommendations to the Miami City Commission regarding the hiring of a new City Attorney. You have raised this question in light of the fact that you are currently on the list of approved outside bond counsels for the City of Miami. The bond counsel list is compiled through an RFQ process, and a selection committee of city officials selects the firms to be placed on that list. The list is utilized as a "wheel" when particular bond issues are approved and the various bond counsels are assigned to particular bond issues at random. Bond counsels are considered outside contractors, not city employees.

Section 2-111(a) of the Miami Code of Ordinances provides that "All attorneys retained or employed by the city, regardless of the nature or kind of service performed or the title or designation under which they render legal service for the city, are hereby placed under the direct supervision and control of the law department." The City Attorney is the head of the law department for the City of Miami.

Two provisions of the Miami-Dade Conflict of Interest and Code of Ethics are implicated in this issue. Although bond counsels are not necessarily subject to the Code because they are not city employees, you would be subject to the Code as an appointed member of an advisory board that will be charged with making recommendations for the appointment of a City Attorney. Section 2-11.1(j) would prohibit an advisory board member from accepting other employment which would impair his or her independence of judgment in the performance of his or her public duties." Section 2-11.1(v) would prohibit an advisory board member from voting on a matter "if the board member will be directly affected by the action of the board on which the member serves.."

It is my opinion that, should you serve on the board that is participating in the City Attorney selection process, it is likely that your potential service as bond counsel under the supervision of the person ultimately selected as City Attorney could impair your independence of judgment as a member of that board. Further, it also appears that your voting on recommending a person to fill a position who would be your direct supervisor as bond counsel would put you in a position of voting on a matter that would directly affect you. Therefore, it is my recommendation that you not accept appointment to the selection committee in order to avoid the aforementioned potential conflicts.

Please feel free to call me should you wish to discuss this matter any further.

Sincerely,
Joe Centorino

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