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Lobbyist registration required even in no-bid contracts

Having a no-bid contract is no excuse for representatives who participate in contract negotiations with Miami-Dade County not to register as lobbyists. That is the Miami-Dade Commission on Ethics and Public Trust's determination in response to **Request for Opinion 18-05**. The question originated following the Inspector General's review of a Bid Waiver Contract for Traffic Signal System Modernization that was awarded to Econolite Control Products, Inc., by the Board of County Commissioners on July 6, 2017, that followed a successful pilot project that tested traffic control hardware and software. Representatives of the Internal Services Department believed that, since the contract was non-competitive, Econolite's representatives did not have to register as lobbyists prior to negotiating terms of the contract. However, neither the County Ethics Code nor any Ethics Commission opinions have ever indicated an exception to lobbying requirements for bid waiver contracts. The COE affirmed that the absence of a competitive bid does not exclude a lobbyist from those rules when he or she is seeking to influence a government action. That includes negotiations on a contract that requires review and/or approval by the Mayor, Board of County Commissioners, County board or a County committee.

The Ethics Commission today deferred action on a draft report summarizing a lengthy investigation that found Miami-Dade County has failed to enforce rules requiring its contract lobbyists to disclose potential conflicts among their clients. Beginning nearly two decades ago, the Board of County Commissioners adopted a series of resolutions and one ordinance that prohibit lobbyists hired to represent the County during the annual state legislative session from representing other clients with conflicting interests. The rules also require hired lobbyists to report, in writing, all other entities they represent and the nature of that representation. The investigation determined, however, that no County agency has requested, collected or maintained such reports. At the request of a representative of lobbying groups, the COE agreed to work with them to come up with a way to meet the existing rules.

The COE found Probable Cause that County Commissioner Xavier Suarez violated the Conflict of Interest and Code of Ethics Ordinance when he filed a lawsuit in August on behalf of three plaintiffs against Mayor Carlos Gimenez and the County alleging misuse of the half-penny transit tax. Mayor Gimenez filed the ethics complaint (**C 18-43-10**) based on a provision of the Ethics Code that prohibits County officials from appearing in court as counsel or legal advisor to a third party seeking relief from the County. However, because Commissioner Suarez immediately removed himself as attorney of record upon learning about the prohibition, the Ethics Commission dismissed the complaint and will issue of Letter of Instruction.

The COE adopted a Letter of Instruction to South Miami Mayor Philip Stoddard, who was found in October to have violated the Conflict of Interest and Code of Ethics Ordinance by speaking in favor of a proposal for the City to pay his legal defense associated with an earlier ethics complaint. In April, the South Miami City Commission voted to provide for the payment of the mayor's defense after Stoddard participated in the discussion of the resolution. A second vote on the same matter failed when it was held in August, during which Mayor Stoddard left the room and filed a conflict of interest form, as required by State and County rules. Because the ethics violation was "cured," the COE dismissed the complaint (**C 18-32-08**). The Letter of Instruction reminds the mayor that he is bound by the Ethics Ordinance and states that "the public trust is diminished when an elected official participates and votes on a matter in which he or she clearly will profit or be enhanced by the action."

The Ethics Commission found No Probable Cause and dismissed three complaints (**C 18-37-09, C 18-40-10, & C 18-41-10**) filed by Palmetto Bay Councilman David Singer against Vice Mayor John Dubois, alleging Dubois violated voting conflict provisions of the ethics ordinance regarding land use applications in the Village. The investigations determined there was no evidence to support the allegations.

No Probable Cause was found to a complaint (**C 18-46-10**) filed against North Miami Beach Interim City Manager Esmond Scott for providing information about city utilities to a city commission candidate. Nothing in the Ethics Code prohibits a government official or employee from providing public information upon request to any citizen.

The Ethics Commission was created in 1996 as an independent agency with advisory and quasi-judicial powers. It is composed of five members, serving staggered terms of four years each. Through a program of education, outreach and enforcement, the Commission seeks to empower the community and bolster public trust.

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