

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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March 26, 2015

Robert Meyers, Esq.
Weiss Serota Helfman Cole Bierman & Popok, P.L.
200 East Broward Boulevard Suite 1900
Fort Lauderdale, FL 33301

Re: RQO 15-02

Waiver of the prohibition against acceptance of travel-related expenses by public officials or employees pursuant to Section 2-11.1(w) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance must include a discrete vote on the item by the governing body, identification of each recipient, and identification of each donor.

Dear Mr. Meyers:

IN A PUBLIC MEETING on March 11, 2015, the Miami-Dade Commission on Ethics and Public Trust opined that a waiver of the prohibition in Section 2-11.1(w) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance concerning acceptance of travel-related expenses by local public officials or employees from a contractor, vendor, service provider, bidder or proposer must include the following elements: 1) a discrete vote by the governing body approving the particular benefits that are to be accepted at a particular event; 2) the identities of the officials or employees who will be the recipients of the benefits; and 3) the identities of the persons or entities providing the benefits.

BACKGROUND

You inquired whether the prohibition in Section 2-11.1(w)¹ against acceptance by City of Homestead officials and employees of travel-related expenses such as meals that were anticipated to be paid for by City vendors at fourteen named out-of-town events could be

¹ Section 2-11.1(w) provides as follows: "Notwithstanding any other provision of this section, no person included in subsections (b) (1) [Mayor and Commissioners], (b)(5) [departmental personnel] or (b)(6) [employees] shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any County contractor, vendor, service provider, bidder or proposer. The Board of County Commissioners may waive the requirements of this subsection by a majority vote of the Commission. The provisions of this subsection (w) shall not apply to travel expenses paid by other governmental entities or by organizations of which the County is a member if the travel is related to that membership." Section 2-11.1(a) provides, *inter alia*, that, "References in the section to County personnel shall therefore be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to."

waived by a majority vote of the Homestead City Council on proposed Resolution No. R2015-01. That resolution would have provided for such a waiver in connection with various events in the nature of conferences, conventions and similar gatherings, all of which appear to have a connection with municipal affairs, e.g., Florida League of Cities, National League of Cities, Miami-Dade County Days, etc.

The proposed resolution indicated that it would apply to acceptance of travel-related expenses from vendors or service providers “concerning invitations to dinners and related activities being conducted as social events” at each of the named events, “as hosted, in part, by City vendors and service providers.”

The proposed resolution included the anticipated dates of all but one of the events. However, it did not specify the exact nature or value of the meals or related activities to which it would apply. It failed to specify the name of any City vendor or service provider that would be paying for the meals or other activities at any of the events. It failed to specify the name of any elected official or employee of the City of Homestead who would be the recipient of the anticipated complimentary benefits, and who would, thereby, be the beneficiary of the waiver.

LEGAL ANALYSIS

Section 2-11.1(w) is a subsection of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, the primary ordinance adopted by the County Commission to insure integrity in local governments within the County. Its provisions are made applicable by Section 2-11.1(a) to County government and to all municipal governments within Miami-Dade County.

The purposes of the blanket prohibition in subsection (w) against acceptance by public officials and employees of travel and travel-related expenses provided by vendors and other service providers doing business with the respective governments are obvious. The provision is intended to avoid corruption in local government through *quid pro quo* arrangements between private vendors and public servants; the exertion of undue influence by private vendors over public servants; the exploitation by public servants of their public positions in order to obtain such benefits; and the appearances of impropriety leading to a diminution of the public trust when any transaction without consideration occurs between a private vendor and a public official or employee which appears to benefit the official or the employee to the detriment of the public interest.

There have been opinions issued by the Miami-Dade Commission on Ethics and Public Trust over the years confirming the broad application of the prohibition in Section 2-11.1(w), as well as the necessity of obtaining a waiver from the governing body of the County or municipality as provided in that subsection, in order to avoid the prohibition.² There has been no opinion, however, defining or interpreting the meaning of “waiver” under this subsection or providing guidance in determining what conditions must be met, other than a majority approval of the governing body, to effect a valid waiver. This inquiry presented an issue of first impression for the Commission.

² See, e.g., RQO 04-135, INQ 10-153, INQ 12-97, and INQ-121.

The Commission decided that the standards for an effective waiver under Section 2-11.1(w) should withstand scrutiny based upon considerations of transparency or intentionality. A waiver of an ethical provision should not be handled as a routine item. Waiving a prohibition intended to avoid corruption or the appearance of corruption should involve a judgment openly arrived at through careful consideration of the issue by the elected officials making the determination.

The definition of “waiver” provided in *Black's Law Dictionary*, while not definitive in determining this issue, is of some value. “Waiver” is defined as follows:

“The voluntary relinquishment or abandonment—express or implied—of a legal right or advantage; forfeiture. The party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it.”³

The facts underlying this request for opinion did not involve any “relinquishment or abandonment” of a right by a public official, but rather the relinquishment or abandonment of a protection enjoyed by the public against corrupt activity by its officials or employees. Under such circumstances, the requirements of knowledge and intentionality should be considered doubly important in effecting the type of waiver that is provided in Section 2-11.1(w).

Such a waiver could not be proper without a public record showing that the officials knew and understood the prohibition, and the nature of the conduct being permitted as a result of the waiver, as well as a public record showing all relevant circumstances underlying the waiver. Such a showing could not be made through the handling of an action item on a “consent” agenda, which is usually reserved for routine, non-controversial items and does not involve a discrete vote by the official body approving the item, but rather a single voice vote approving an array of such items without discussion or debate.

CONSEQUENTLY, the Commission on Ethics found that, in order to satisfy the requirement of a knowing and intentional waiver of the ethical prohibition under Section 2-11.1(w) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, there should be a showing on the record of at least three things:

- 1) A discrete vote on the precise waiver issue itself apart from any other item or group of items, either by a voice vote or roll call vote following an opportunity for debate and discussion;
- 2) Disclosure of the identity of any contractor, vendor, service provider, bidder or proposer providing any travel-related benefit to a public official or employee; and
- 3) Disclosure of the identity of any public official or other personnel receiving any such benefit.

These disclosures should be made on the record in order to place the public on notice of such a waiver and its import. Ideally, the disclosures should include as much information as can reasonably be obtained in advance concerning the nature and value of any benefit being

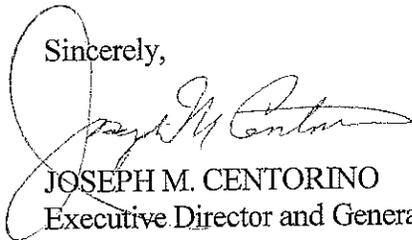
³ *Black's Law Dictionary*, 816-17 (Bryan A. Garner ed., 4th pocket ed. 2011)

accepted by a public official or employee. It is understood that this may not always be possible sufficiently in advance of an event to be included in the waiver request by the party requesting the waiver, but a good faith attempt to be as comprehensive as possible is required.

The three-prong waiver requirement referenced in this memo should be considered a minimum standard for compliance with the waiver provision in Section 2-11.1(w).

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and is not applicable to issues under State law. Inquiries regarding possible conflicts under State ethics law should be directed to the State of Florida Commission on Ethics. Please feel free to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph M. Centorino", written in black ink. The signature is positioned above the printed name and title.

JOSEPH M. CENTORINO
Executive Director and General Counsel