



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

AGENDA ITEM COVER MEMORANDUM

TO: Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: County Contract Lobbyist Report (Completed 2018 Legislative Session)
Resolution 632-10

DATE: March 14, 2019

Pursuant to Resolution R-632-10, the attached County Contract Lobbyist Report for the completed 2018 Legislative Session is forwarded to the Board for its consideration.



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

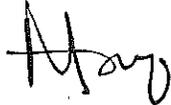
19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: County Contract Lobbyist Report (Completed 2018 Legislative Session)
Resolution 632-10

DATE: March 15, 2019

The Commission on Ethics and Public Trust, in a public meeting held on March 13, 2019, considered the results of a staff compliance review pursuant to Board of County Commission Ordinance and Resolutions relating to County contract lobbyists. "County contract lobbyists" are those who are contracted by the County to lobby on its behalf before the State legislative and executive branches of government. The following report and recommendation are provided in response to Resolution No. 632-10¹ which requests of the Commission on Ethics and Public Trust (Ethics Commission) that it conduct conflict checks related to lobbying clients of County contract lobbyists along with checks of any new clients or issues that may arise.

Introduction:

Almost two decades ago, the Miami-Dade Board of County Commissioners (Board) adopted the first of several resolutions and one ordinance relating to County contract

¹ Attached Exhibit A.

lobbyists.² Collectively, the ordinance and resolutions established a reporting and regulatory framework designed to prohibit contract lobbyists from engaging in conflict lobbying activities absent Board waiver approval and to assure transparency by requiring written disclosure to the County of all other legislative lobbying clients and the nature of the representation. The Board also requested of the Ethics Commission that it conduct conflict checks relating to Contract lobbyist clients and to advise the Board of any issues that may arise.

Summary Finding:

County conflict lobbyists were “retained” by parties with positions opposite to positions of the County. There was less than strict compliance with the requirement that County contract lobbyists provide written disclosure to the County of all other legislative lobbying clients and the nature of their representation, or at least not in the specific manner required by resolution.

Ordinance and Board Resolutions:

Section 2-11.1.2 (a) of the Code of Ordinances prohibits conflict lobbying by a County contract lobbyist. The ordinance provides that:

No person or entity, whether an individual, firm, partnership or corporation, which receives compensation from the county for lobbying on behalf of the county or any of its agencies or instrumentalities at either the state, national or municipal level shall *represent* any entity in any forum to support a position in opposition to a position of the county unless this Board grants a specific waiver for a specific lobbying activity. [emphasis added]

In support of its goal of guaranteeing greater transparency regarding County contract lobbyists and their other clients, in Resolution No. 1236-99, the Board established a written reporting policy regarding Contract lobbyists’ other clients. Contract lobbyists are required to:

Provide written notice to the County Manager [now the Mayor] and the County Attorney of any other party the lobbyists or his firm wish to represent during the upcoming legislative session and the *nature of the proposed representation*. [emphasis added]

² Attached Composite Exhibit B.

In Resolution No. 56-10, the Board established an expansive definition of conflict lobbying by resolving that a County contract lobbyist shall not:

Represent any entity in any forum to support a position in opposition to a position of the County unless the Board first grants a specific waiver for the representation. A position in opposition to a County position is not limited to a position that conflicts with an express provision of the County's legislative package. *An actual or perceived conflict may arise in other areas.* [emphasis added]

Finally, in Resolution 632-10, the Board directed that the disclosure requirement that contract lobbyists' other clients and nature of representation should be included in the public solicitation of services and contract papers. The resolution provides that:

The Mayor or Designee is directed to include language reflecting the policies set forth in this resolution in all future federal and state lobbying requests for qualifications, other procurement documents as applicable, contracts and contract renewals.

By imposing broadly defined conflict lobbying restrictions, mandatory waiver provisions, and affirmative written disclosure obligations, the Board has tried to make information regarding contract lobbyists' other clients and the nature of the representation readily available. In this way, the Board can make informed decisions regarding conflict lobbying activities and possible waivers. Equally important, citizens are informed regarding the greater client and issue representation activities of contract lobbyists that are compensated with public funds.

Reviewed Materials and Interviews:

Our review of lobbyists contracted by the County for 2018 and tasked with representing the County during the 2018 legislative session included an evaluation of Request for Qualifications (RFQ) No. 00600 for Governmental Representation and Consulting Services in Tallahassee, Florida and corresponding Contract No. RFQ-00600a; the Miami-Dade County State Legislative Package; on-line state lobbyist reports; interviews with several County contract lobbyists; interviews and consultations with the Director of the Office of Intergovernmental Affairs, interviews and consultations with Assistant County Attorneys; and applicable County ordinances and Resolutions.

Conflict Lobbying Findings:

The County's published 2018 State Legislative Package identified supporting home rule and opposing any effort to preempt local authority as its first guiding principal.

Accordingly, our conflict lobbying review naturally focused on proposed preemption legislation.

During the 2018 session, the legislature considered legislation that would have preempted or limited local government's ability to regulate or limit puppy sales. There was also consideration of legislation that would have preempted or limited local government's ability to regulate short term rentals.

There were County contract lobbyists retained by parties supporting both state preemption of local regulation of pet sales and short-term rentals; positions opposite to the County.

A County contract lobbyist was retained to represent a client advocating for state preemption of local pet sales regulation. He requested a waiver from the Board so that he and two of his subconsultants could continue to represent the interests of a pet retailer. The waiver request was initially deferred and then denied by the Board and the legislative session concluded without successful passage of the legislation. The Commission on Ethics recommended to the Board that the requested waiver be denied.

The second preemption matter, the Florida Vacation Rental Act, would have preempted local governments from regulating short term rentals of vacation properties in this state. Several County contract lobbyists were retained by a client advocating for state preemption of local regulation of short-term rentals.

These latter County contract lobbyists were interviewed as part of this review. They related that once they were retained by the County, they did not actively lobby the legislature on behalf of their short-term rental client during the 2018 legislative session. Instead, they monitored the progress of the preemption legislation throughout the legislative session. They concluded that the dual retainer by the County and a party with a position opposite to a position of the county complied with County ordinance and resolutions as they did not actively lobby on behalf of the other party. Accordingly, they did not feel that they needed to ask for a conflict waiver

Written Disclosure Findings:

In July 2017, the Board, by resolution, authorized the advertisement of Request for Qualifications (RFQ) No. 00600 for Governmental Representation and Consulting Services in Tallahassee, Florida for the 2018 legislative session. The RFQ incorporated many of the contract lobbyist reporting obligations promulgated by the Board by prior resolutions and ordinance and specifically provided that the selected contract lobbyist:

On behalf of itself and any and all employees, partners, and subcontractors, shall have an affirmative obligation to notify the County Mayor and the

Office of Intergovernmental Affairs in writing of each and every party the selected Proposer [contract lobbyist] and/or its employees, partners, or subcontractors wishes to represent before the Florida Legislature, the Governor's Office, or any state agency, as well as the nature of the proposed representation. This obligation shall apply whether such party or interest is adverse to the County or not. Such notification must include all the parties the selected Proposer or employees, partners, or subcontractors wishes to represent.

The corresponding County contract lobbyist agreement contains a clause that compels contract lobbyists to provide to the Director of the Office of Intergovernmental Affairs a copy of the 2018 state legislative and executive Lobbyist Registration Forms for "each and every client the Contractor and its employees, partners, and subcontractors represents at the time the Agreement is entered."

County contract lobbyists did not make the required written disclosure to the Mayor or the Office of Intergovernmental Affairs. Some of the contract lobbyists did point out, through their representative, that they submitted the same information to the State and that it was readily accessible on-line.³ State legislative and executive lobbying registration protocols require disclosure of lobbyist clients, industry, and the issue the lobbyist is advocating on. The local Board resolutions do not use the term "issue" but rather "the nature of the representation."

Several of the County contractors interviewed by the Ethics Commission relayed that no Intergovernmental Affairs staffer ever mentioned the clause in their retainer agreement that required them to submit in writing to the Director of the Office of Intergovernmental Affairs, the names of their non-County clients and the nature of the representation provided to those clients.

In interviews by Ethics Commission staff, the Director of the Office of Intergovernmental Affairs acknowledged that he did not, nor has he in the past, received, collected or

³ A prior draft of this report was provided as a courtesy to several County contract lobbyists and their representative. They point out that persons or entities engaged in lobbying the state legislature must report their principal, the lobbyist firm, the lobbying "issues" and the corresponding bill under consideration. This reported information is publicly accessible in on-line format. In their view, this process mimics and satisfies the local ordinance and resolution reporting requirements.

maintained written submissions from any County contract lobbyists disclosing the contract lobbyists' other clients or the nature of the representation of those third parties.

The Assistant County Attorney assigned to state lobbying matters advised that he does not serve as the retainer agreement's compliance officer. He explained that as a matter of long-standing County policy and practice, contract compliance matters are handled by County departmental staff and not by the County Attorney's Office. He did likewise advise that he was unaware of County contract lobbyists being required to provide the referenced disclosures.

Both the Director and the Assistant County Attorney noted that despite the non-compliance with the specific provisions of Board resolutions regarding contract lobbyists, they verbally inquired of all County contract lobbyists whether they were engaged in any conflict lobbying activities. Additionally, in electronic mail distributions contract lobbyists were reminded to review all the lobbying assignments for conflicts and were encouraged to speak either to the Director or to the Assistant County Attorney if they had any questions or concerns. Again, the Director and Assistant County Attorney explained that these inquiries occurred throughout the state legislative session.

Finally, both the Director and the Assistant County Attorney were emphatic in their assertion that there was compliance with the ultimate Board objective of assuring that contract lobbyists were not engaging in conflict lobbying activities. Nevertheless, they acknowledged that there has not been strict compliance with the specific written filing requirements imposed by resolution.

As described above, the Assistant County Attorney relayed that the County Attorney's Office is not as a matter of policy and practice engaged with contract compliance matters. Compliance matters are tasked to County departmental staff, in this case, the Office of Intergovernmental Affairs.

The Intergovernmental Affairs Director opines that he should not be involved with the monitoring of possible, potential or actual conflict lobbying by contract lobbyists beyond the current practice. He suggests that the Office of Intergovernmental Affairs should not be the repository for lobbyist other-client, nature of representation, and conflict lobbying papers because this creates a false public perception that this entity is charged with a compliance enforcement function.

Conclusion and Recommendations:

Section 2-11.1.2 of the Code of Ordinances prohibits a County contract lobbyist from supporting a position in opposition to a position of the County in any forum. Subsequent resolutions have defined conflict representation in an expansive manner. Resolutions have

also imposed written conflict disclosure obligations on County contract lobbyists. However, there is some vagueness regarding what constitutes conflict "representation." There is a question whether alternative reporting procedures are compliant with resolution requirements. Finally, there appears to be some disagreement regarding who should be the custodian of reporting documents.

1. Recommendation: Define "Nature of Proposed Representation"

Section 2-11.1.2 (a) and Resolution No. 1236-99, use the term "represent" to describe the relationship between the contract lobbyist and non-County clients that may trigger public written conflict disclosure obligations.

It seems from the limited interviews of some County contract lobbyists, that they believe that accepting retainer and payment, and publicly registering with the State of Florida as a lobbyist for a party that is advancing a position in opposition to a position of the County, is not a prohibited conflict representation. So, if the activity includes legislation tracking, status updates, or something other than open support, then a County contract lobbyist may be retained by a party with a position opposite to a position of the County.

This may be an area ripe for further policy consideration by the Board or for clarification. Given the dynamics of the State's legislative process, beginning with committee meetings before session, open committee meeting presentations during session, meetings with other lobbyists or issue advocates, and a myriad of contact scenarios between lobbyists and elected members of the legislature, the executive branch, and their staffs, the Board may want to clearly define "represent" so that anything beyond complete passive monitoring and reporting back to the client, on behalf of a party with interests adverse to those of the County, would be prohibited for County contract lobbyists. Alternatively, the Board could simply prohibit any type of retainer of a County contract lobbyist by a party with an interest opposite to that of the County.

2. Recommendation: Clarify if Filing with the State Satisfies Local Filing

Some County contract lobbyists through their representative have suggested that persons or entities engaged in lobbying the legislature must report their principal, the lobbyist firm, the lobbying "issues" and the corresponding bill under consideration. This information reported to the state is publicly accessible in on-line format. Again, they assert that his process mimics and satisfies the local ordinance and resolution reporting requirements.

However, Board resolutions do not specifically allow for substitute notice practices and instead compel County contract lobbyists to provide written notice to the Mayor or his designee and the County Attorney of any other party the lobbyists or his firm wish to

represent during the upcoming legislative session and the nature of the proposed representation.

The Board may wish to clarify if substitute processes satisfy the specific dictates of its prior resolutions on the issue of county contract lobbyist client conflicts.

3. Recommendation: Consider an Alternate Records Custodian

Finally, the Director of the Office of Intergovernmental Affairs has raised appearance and operational concerns with being the custodian of County contract lobbyist written submissions regarding non-County clients and the nature of the representation. He sees even greater issues with serving as the enforcement entity for non-compliance. For these reasons, his office has not been fully engaged in making sure that County contract lobbyists comply with specific written submission requirements.

Again, the Board may wish to simply insist on strict compliance with its prior public disclosure and nature of client representation resolutions. Alternatively, in the face of concerns expressed by its staff, it might consider looking to other established ministerial and regulatory processes regarding lobbyists.

There are ordinance codified processes relating to lobbyist registration and training that task third party neutral agencies with ministerial records custodian functions. For example, county lobbyist registration is managed by the Clerk of the Board. The Commission on Ethics staff reviews the lobbyist training status of registered lobbyists, notices lobbyists that are non-compliant, facilitates compliance, or engages in regulatory actions for non-compliant lobbyists.

A similar protocol that removes the ministerial records custodian function of receipt of County lobbyist "other client and nature of representation papers" from the County and reassigns them to a third party neutral, perhaps the Clerk of the Board as with other lobbyist filings, would assuage current county staff concerns.⁴ Public on-line access to these annual filings, would allow citizens as well as the Board to be fully apprised of the nature of other lobbying work engaged in by County contract lobbyists.

The Commission on Ethics remains available to consult with the County's designated points of contacts regarding the conclusions and recommendations made in this report and

⁴ The Clerk of Board was advised of this suggestion prior to its inclusion in this report.

to collaborate with the goal of making the County contract lobbyists conflict in representation protocols more transparent for the Board and the greater community.