
From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, October 19, 2015 8:57 AM
To: Sanchez, Rodzandra (COE)
Subject: Victoria Mendez, City Attorney,City of Miami (Lobbying; Two-Year Rule) INQ 15-231

INQ 15-231 Mendez

From: Perez, Martha D. (COE)
Sent: Monday, October 19, 2015 8:48 AM
To: VMendez@miamigov.com
Cc: Centorino, Joseph (COE); Diaz-Greco, Gilma M. (COE); mshaber@miamigov.com
Subject: Victoria Mendez, City Attorney,City of Miami (Lobbying; Two-Year Rule) INQ 15-231

Dear Ms. Mendez,

You inquired whether Section 2-11.1(q), Miami-Dade County Conflict of Interest and Ethics Ordinance applies to former members of the City of Miami's Planning & Zoning Appeals Board (PZAB). You further inquired whether lobbying activities, specifically speaking to City staff and representing a third party before the City Commission, constitute "transacting business" with the City under Sec. 2-612 of the City of Miami Code.

As background, the PZAB is a quasi-judicial board, comprised of eleven members, who advise and make recommendations to the City Commission in all phases of the City's comprehensive planning program, act as a local planning agency and make determinations on variance applications. See Section 62-25, City of Miami Code.

Section **2-612 (a)** of the City of Miami Code, states, *in relevant part*: " No person included in section **2-611** [officer, official and employee of the city, including every member of any board, commission or agency of the city] shall enter into any contract or transact any business with the city or any person or agency for the city, or shall appear in representation of any third party before any board, commission or agency of which such person is a member..." Section **2-612 (c)** provides that the activity described in subsection (a) " shall remain in effect for a period of two years after the officer, official, or employee has left city service or terminated city employment."

Sec. **2-11.1(q)** of the County Ethics Code (Two-year post-employment restrictions) prohibits " an elected County official,[ie., Mayor, County Commissioner] or a member of the staff of an elected County official, or as County Manager, senior assistant to the County Manager, department director, departmental personnel or employee" from LOBBYING any County officer or employee "in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest..." for two years after his or her County employment has ceased. Members of zoning appeals boards are considered "quasi-judicial personnel" who do not fall under the County's two-year post-employment restrictions. Consequently, pursuant to Sec. 2-11.1(q) of the County Ethics Code, a former board member may meet with staff, appear before the City Commission on behalf of his or her private employer or appear before the board on a quasi-judicial matter.

While the County has placed these post-employment restrictions on former County officials and employees, the City has enacted a more stringent standard of conduct with respect to its post-employment restrictions, as evidenced by Section 2-612 (a-c) of the City Code. As stated therein:

- 1) No current board member shall contract or transact any business with the city;
- 2) No current board member shall appear in representation of any third party before his or her board ;

- 3) No former board member shall contract or transact any business with the city two years after leaving City service;
- 4) No former board member shall appear in representation of any third party *before his or her former board* for two years after leaving city service.

You further seek clarification on whether lobbying on behalf of a private employer constitutes “transacting business” with the City. Specifically, you inquire whether working as a lobbyist, on behalf of an employer (principal), and speaking to City staff constitutes transacting business with the City; and, whether working as a lobbyist, compensated by a firm/ employer, and appearing before city boards constitutes transacting business with the City.

A *lobbyist*, as defined by Section 2-11.1(s)(1)(b) of the County Ethics Code and Section 2-653 of the City Code, includes “all paid persons, firms or corporations employed or retained by a principal” who seek to influence official government actions or decisions. In contrast, *transacting business* denotes “the purchase or sale by the County [City] of specific goods or services for a consideration.” See Section 2-11.1(b)(10) of the County Ethics Code. While a lobbyist is engaged with the task of influencing the County [City] official to obtain a new contract, modify an existing contract or induce other official action, the lobbyist is not directly transacting business with the county/ city because he or she is merely providing a service to his or her employer. A lobbyist is compensated to represent the principal/employer before city officials or to oversee the principal’s/employer’s relationship with the city, which ultimately may culminate in the principal/ employer/firm engaging in a business transaction with the city. Consequently, lobbying activities such as speaking to city staff or appearing before boards on behalf of an employer in an attempt to influence official action or decision, do not constitute transacting business with the city. Notwithstanding, as previously stated, a current or former board member is prohibited from appearing in representation of a third party or lobbying on behalf of that third party **before his or her own board**. See Section 2-612 of the City Code.

Lastly, you inquire whether a current member of a city committee may lobby on behalf of his or her employer before the City Commission. While Section 2-11.1(m)(2) of the County Ethics Code prohibits a board member from appearing before his or her own board, agency, committee to lobby on behalf of himself or a third party, a board member may lobby before other boards, as long as he or she comports to the lobbying registration and training requirements under the County and City Codes.

This opinion is based on the facts presented. If any of these facts change, please contact us.

Sincerely,

Martha D. Perez

Staff Attorney

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From: Centorino, Joseph (COE)
Sent: Thursday, October 15, 2015 10:34 AM
To: Perez, Martha D. (COE)
Subject: FW: Advice request

Please take a look at this and draft a reply. Thanks.

From: Mendez, Victoria [<mailto:VMendez@miamigov.com>]
Sent: Monday, October 12, 2015 12:36 AM
To: Centorino, Joseph (COE) <CENTORI@miamidade.gov>
Cc: Min, Barnaby <bmin@miamigov.com>; Suarez-Rivas, Rafael <RSuarez-Rivas@miamigov.com>; Haber, Matthew S. <MSHaber@miamigov.com>
Subject: Advice request

The purpose of this email is to request an interpretation of section 2-11.1(q) of the Code of Ethics of Miami-Dade County. Specifically, does the "two year rule" apply to former board members (non-employees) of the City of Miami's Planning, Zoning, and Appeals Board (PZAB)?

Can a former member of the PZAB meet with City staff and appear before the City Commission on behalf of his/her private employer?

Also, if the former member is an attorney, can he/she appear before the city commission or the PZAB on a quasi-judicial matter?

While Section 2-612 of the City of Miami code prohibits former members from appearing in representation of any third party before the board of which such person was a member for a period of two years after city service, it is not clear if section 2-11.1(q) of the Miami Dade code would apply to former PZAB members.

Also, section 2-612 of the City Code prohibits the former member from transacting business with the City. Can it be interpreted that being a lobbyist for hire or working on behalf of an employer and speaking to city staff and before boards for payment to the firm or employer of the former member would constitute transacting business with the city thus creating the two year ban on the City side as well.

I thank you for taking the time to review this request and I look forward to your response.

This opinion as to what transacting business encompasses may also affect a present City of Miami committee member who was allegedly paid to speak at a recent commission meeting and he is still a city of miami lower board/committee member.

Thank you!!!

Victoria Méndez, City Attorney
City of Miami