
From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, April 21, 2015 10:59 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Thomas Pepe, City Attorney, City of South Miami (Board Conflict) INQ 15-67

[INQ 15-67 Pepe](#)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, April 21, 2015 10:37 AM
To: 'Pepe, Thomas F.'
Cc: Centorino, Joseph (COE)
Subject: Thomas Pepe, City Attorney, City of South Miami (Board Conflict) INQ 15-67

Dear Mr. Pepe:

You have inquired whether Mr. Raul Carreras, a South Miami Planning Board (City Planning Board) member may serve on the board at the same time that Bermello, Ajamil & partners, Inc. (B&A), a firm in which he is a partner with a less than 5% interest, has a contract to provide professional services to the City of South Miami for city public works projects.

In a previous opinion (INQ 13-154) the COE opined that Mr. Carreras, who at that time, was a salaried employee of B&A, could serve on the board at the same time that B&A had a contract with the city as long as he followed certain limitations which were set out in that opinion. Currently, Mr. Carreras is a partner at B&A with less than a 5% interest in the firm. You have inquired whether his partnership status would change the results of our previous opinion.

The City of South Miami Ethics Code at Section 8A-1(b)(8) defines the term "controlling financial interest as "ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm, partnership, or other business entity at the time of transacting business with the city." Furthermore, the City of South Miami Ethics Code at Section 8A-1(d) has a limitation that does not permit a board member to enter into "any contract or transact any business through a firm, corporation, partnership or business entity in which that person or any member of the immediate family has a **controlling financial interest**, direct or indirect, with the city or any person or agency acting for the city, and any such contract..." (Emphasis added)

Consequently, B&A is not prohibited from contracting with the city because Mr. Carreras' partnership interest is less than 5%, and therefore is not a "controlling financial interest" as defined in the City of South Miami Ethics Code at Section 8A-1(d).

However, under the City of South Miami Code, Mr. Carreras would still be subject to the following limitations:

- He must file a sworn statement disclosing his employment and lack of a financial interest with the clerk of the city. *See* City of South Miami Ethics Code at Sec. 8A-1(f).
- He is prohibited from disclosing confidential information to B&A that he may receive as a result of his board service. *See* City of South Miami Code at Sec. 8A-1(i):
- He is prohibited from appearing before any city agency or board on behalf of B&A. *See* City of South Miami Code at Sec. 8A-1(l)(2):

The provisions outlined above are consistent with similar requirements under Section 2-11.1 of the County Ethics Code. Additionally, the County Ethics Code would require Mr. Carreras to abide by the following limitations:

- He is prohibited from taking any official actions related to B&A. *See* Miami Dade Code at Sec. 2-11.1 (n).
- Given that Mr. Carreras is a partner of B&A, Section 2-11.1 (v), would prohibit him from voting on any plans submitted by B&A to the City Planning Board if such a vote would affect his personal interest (e.g., the compensation he receives as a partner of the firm) as a result of the action of the board. Section (v) precludes board members from voting on a matter before the board on which they sit if they would be directly affected by the action of the board AND if they have a relationship with the entity as an officer, director, **partner**, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor or creditor. (Emphasis added)
- Section 2-11.1 (g) prohibits him from using his official position to secure special privileges or exemptions for himself or others.

Lastly, you should also be aware that Fla. Stat. 112.313(7) may be applicable in these circumstances. This statute prohibits a public officer or employee from having a contractual relationship or employment with an agency or business entity that is subject to the regulation of, is doing business with the officers agency, or that will create a continuing or frequently recurring conflict of interest; or that would impede the “full and faithful discharge” of public duties. For a binding interpretation of this statute we refer you to the Florida Commission on Ethics. Their website is at: <http://www.ethics.state.fl.us/>

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

Best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Thursday, April 09, 2015 2:28 PM
To: Diaz-Greco, Gilma M. (COE)
Subject: RE: INQ 13-154 City of South Miami Planning Board Member Carreras

A Planning Board member, Raul Carreras, was working for an architectural firm, Bermello, Ajamil & Partners, Inc., ("B & A" or "Firm") as an employee a year or so ago and the City was advised by the Miami Dade County Commission on Ethics ("COE") that as "[a] recently appointed City of South Miami Planning Board member [he] may serve on the board at the same time that his employer, Bermello, Ajamil & Partners, Inc., (B & A), has a contract with the city [to provide professional services to the City for City public works projects].

The City of South Miami still, to this day, has a professional services agreement with B & A, a private architectural and engineering firm for when the City needs an architect or engineer. B & A is on a CCNA roster but currently does not have a particular project to work on. However, the City would like to give it a project.

The board member, Mr. Carreras was a salaried employee at the time that the COE gave the foregoing opinion and he, at that time, did not have any financial interests in B & A equal or greater than 10%.

I do not believe that any City projects that were overseen by B & A through the city's professional service contract needed to go before the planning board in the past. In addition, the City's public works department supervisor informed us that he does not expect to have any project designed by them that will need to go before the planning board.

At the time that Mr. Carreras was only an employee of B & A, the COE opined that

"B & A is not prohibited from contracting with the city because the B & A employee who serves as a planning board member has no financial interests in B & A. (City of South Miami Ethics Code at Sec. 8A-1 (d).) A financial interest is defined as 10% or more. (City of South Miami Ethics Code at Sec. 8A-1 (b)(8).)

However, under the City of South Miami Ethics Code at Sec. 8A-1 (f), the board member must file a sworn statement disclosing his/her employment and lack of a financial interest with the clerk of the city.

Additionally, under Sec. 8A-1 (i), the board member cannot disclose confidential information to B & A that he/she may receive as a result of his/her board service. At Sec. 8A-1 (l)(2), he/she may not appear before any city agency or board on behalf of B & A.

Finally, under the County Code at Sec. 2-11.1 (v), the board member may not vote on any matters affecting B & A if he/she would be directly affected by the vote.

Now, today, the only thing that has changed is that Mr. Carreras has become a partner of B & A with less than a 5% interest.

May Mr. Carreras remain on the board if his firm is given a project to perform for the City that is not intended to go before the Planning Board?

May Mr. Carreras remain on the board if his firm is given a project to perform for the City if the project requires review by the Planning Board?

Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney
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From: Pepe, Thomas F.
Sent: Tuesday, March 17, 2015 3:47 PM
To: 'Diaz-Greco, Gilma M. (COE)'
Subject: FW: INQ 13-154 City of South Miami Planning Board Member
Importance: Low

We received the email response from Ms. Frigo back in 2013. Since that time the board member has changed from a simple employee to a partner with less than a 10% interest in the partnership. The fact that he is a partner, will that change the opinion in the email below?

Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney
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1450 Madruga Avenue, Ste 202,
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From: Frigo, Victoria (COE) [<mailto:FRIGOV@miamidade.gov>]
Sent: Monday, June 24, 2013 3:07 PM
To: Pepe, Thomas F.

Subject: [BULK] INQ 13-154 City of South Miami Planning Board Member

Importance: Low

Mr. Pepe,

A recently appointed City of South Miami Planning Board member may serve on the board at the same time that his employer, Bermello, Ajamil & Partners, Inc., (B & A), has a contract with the city.

The City of South Miami has entered into a professional services agreement with B & A, a private architectural and engineering firm. The board member has stated that he/she is a salaried employee with no financial interests in B & A equal or greater than 10%. It is unclear whether any of the projects overseen by B & A through this city contract will come before the planning board.

B & A is not prohibited from contracting with the city because the B & A employee who serves as a planning board member has no financial interests in B & A. (City of South Miami Ethics Code at Sec. 8A-1 (d).) A financial interest is defined as 10% or more. (City of South Miami Ethics Code at Sec. 8A-1 (b)(8).)

However, under the City of South Miami Ethics Code at Sec. 8A-1 (f), the board member must file a sworn statement disclosing his/her employment and lack of a financial interest with the clerk of the city.

Additionally, under Sec. 8A-1 (i), the board member cannot disclose confidential information to B & A that he/she may receive as a result of his/her board service. At Sec. 8A-1 (l)(2), he/she may not appear before any city agency or board on behalf of B & A.

Finally, under the County Code at Sec. 2-11.1 (v), the board member may not vote on any matters affecting B & A if he/she would be directly affected by the vote.

Sincerely,

VICTORIA FRIGO, SENIOR STAFF ATTORNEY

Direct Phone: 305 350-0601

Main Number: 305 579-2594

Fax: 305 579-0273



19 West Flagler St., Suite 820
Miami, FL 33130

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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]

Sent: Friday, June 21, 2013 10:47 AM

To: Frigo, Victoria (COE)

Subject: City of South Miami - Ethics Question

A member of the city's planning board has the following question:

- I was appointed to the City of South Miami Planning Board earlier this month (June 2013)
- I am a salaried employee of Bermello, Ajamil & Partners, Inc., an architectural and engineering professional services firm
- I do not have a "controlling financial interest" in Bermello, Ajamil & Partners, Inc. as defined in Sec. 8A-1.(b)(8)

- The City of South Miami is seeking to execute a Professional Services Agreement with Bermello, Ajamil & Partners, Inc. for Miscellaneous Services (i.e., a Continuing Services Agreement) for no specific or particular project.
- With the execution of the PSA, Bermello, Ajamil & Partners, Inc. would be employed by the City of South Miami; **not** by a private entity/firm/developer "of a mixed use development project in the City of South Miami."
- There is no guarantee and/or expectation that the work to be performed by Bermello, Ajamil & Partners, Inc. **for the City of South Miami**, if any, will "at some point in the process.....go before the Planning Board for approval."

Is this a violation of MDC ethics ordinance or the city's Conflict of Interest and Code of Ethics Ordinance, Sec. 8A-1?

Very truly yours,

Thomas F. Pepe

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