
INQ 16-170

From: Perez, Martha D. (COE)
Sent: Wednesday, June 22, 2016 4:04 PM
To: 'angus@mm-pa.com'
Cc: Centorino, Joseph (COE); Diaz-Greco, Gilma M. (COE); Turay, Radia (COE)
Subject: Angus Jackson , on behalf of Law Firm; Lobbying, ie., Contingency Fees; INQ 16-170

Dear Mr. Jackson:

You inquire about the lobbyist contingency fee prohibition set out in Section 2-11.1(s)(7) of the Miami-Dade County Code. Specifically, you would like to know whether this prohibition is limited to lobbyists or to “everyone”.

Analysis

Section 2-11.1(s)(7) of the County Ethics Code states that,

No person may, in whole or in part, pay, give [,]... agree to pay or give to another person [,]...receive or agree to receive a contingency fee....
“Contingency fee” means a fee, bonus, commission, or non-monetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of : (1) an ordinance, resolution, action or decision of the County [municipal] Commission; (2) any action, decision or recommendation of the County [city] Manager or any County [municipal] board or committee; or (3) any action, decision or recommendation of County [city] personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County [municipal] Commission, or a County [municipal] board or committee.

The aforementioned ban on contingency fees is incorporated in the County’s *Lobbying* Ordinance, therefore, it correspondingly **applies to everyone who lobbies the County or its municipalities**. While the provision does not prohibit lobbying, it restricts the form of compensation that a person is permitted to give or accept if that person or entity is engaged by a third party to represents its interests (ie., lobby) before Miami-Dade County or its municipalities.

The Ethics Commission has provided guidance in past opinions on the issue of lobbyist contingency fees. For example:

- A person may *lobby* as long as the entire, definitive amount of compensation related to the *lobbying* is established at the time that the person *lobbies* and such amount is not dependent on the success or failure of the *lobbying* efforts. INQ 12-132
- The prohibition on contingency fees in Section 2-11.1(s)(7) *does not* extend to sales representatives or other similarly-situated individuals who are traditionally compensated with commissions or bonuses. RQO 06-24; RQO 10-28; INQ 12-231; INQ 13-249; INQ 156; INQ 15-179

- A payment to an attorney based on whether an RFP is awarded, where the payment reflects a percentage of the value of the contract awarded to a client, is a contingency fee arrangement prohibited by Section 2-11.1(s)(7). INQ 14-116
- The prohibition on contingency fees in Section 2-11.1(s)(7) *does not* extend to attorneys who are practicing law and not lobbying. INQ 14-55; INQ 15-18; INQ 15-21. If you are inquiring about activities involving an attorney and whether such activities constitute the practice of law (lawyering) or lobbying, please provide us with a more detailed explanation of what person or entity you are referring to and what activities the person or entity is or will be engaged in. I am attaching an article regarding lawyers and lobbying for additional information.

All the references cited herein as INQ's or RQO's may be found at our website at <http://ethics.miamidade.gov>

Finally, please be aware that a person who is not a lobbyist, as defined in Section 2-11.1(1)(b) of the Miami-Dade County Code (Lobbying Ordinance), but who pays or receives a contingency fee or enters into an agreement to pay or receive a contingency fee may nevertheless be subject to other restrictions set out in laws or regulations which are beyond the jurisdiction of this office. You may wish to consult with other agencies depending on the nature of your inquiry. However, allow me to reiterate, **in the event that your inquiry relates to a specific individual, entity or activity which may be considered "lobbying" under the Miami-Dade County Code and/or a local municipal code, and which may implicate the lobbying contingency fee ban, please contact us for a more definitive opinion.**

This opinion is based on the facts as you have presented them to the Ethics Commission. Please contact us if these facts change. Inquiries regarding possible conflicts under State law should be directed to the Florida Commission on Ethics.

Martha D. Perez

Staff Attorney

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From: Angus Jackson [<mailto:angus@mm-pa.com>]

Sent: Tuesday, June 21, 2016 1:22 PM

To: Ethics (COE) <ethics@miamidade.gov>

Subject: Clarification on Section 2-11.1(s) and Contingency Fees.

Good Afternoon,

I am writing on behalf of Marko and Magolnick P.A. and we are seeking clarification on the rule concerning Contingency Fees in section 2-11.1(s).

The section states, "No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) an ordinance, resolution, action or decision of the County Commission; (2) any action, decision or recommendation of the

County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee.”

We would like to know if this provision against contingency fees applies solely to lobbyists as defined by the statute or if it extends to everyone.

Thank you,
Angus Jackson

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