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EXECUTIVE DIRECTOR  
GENERAL COUNSEL  
Michael P. Murawski  
ADVOCATE

June 22, 2016

Albert Dotson, Esq.  
Bilzin Sumberg Baena Price and Axelrod, LLP  
1450 Brickell Avenue Ste. 2300  
Miami, FL 33131

**RQO 16-03**

Re: Appointment to Miami-Dade County Public Health Trust

Dear Mr. Dotson:

This opinion is provided to you at your request pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics, which the Miami-Dade Commission on Ethics and Public Trust is empowered to interpret, as well as pursuant to Miami-Dade County Commission Resolution No. R-1020-11, and Article III, Section 3 of the By-laws of the Board of Trustees (BT) of the Public Health Trust of Miami-Dade County, under which this agency has the authority to issue opinions concerning the ethics requirements therein.

An issue has arisen regarding whether you, a recent appointee to the Public Health Trust (PHT) Board of Trustees, and also a registered County lobbyist, may serve on the BT while maintaining your private lobbying practice in the County. You have been completely cooperative with this agency and have provided pertinent information which has assisted us in our evaluation of this issue. It should be noted that you are a well-known and respected lobbyist in the County who has lobbied on numerous County contractual and other issues for a broad array of private clients. You have not been a frequent lobbyist at the PHT, and last lobbied there about nine months ago. You have indicated that neither you nor your law firm, Bilzin Sumberg Baena Price and Axelrod, LLP, in which you are a partner, would be lobbying at the PHT following your appointment to the BT. However, it is your intention that both you and your law firm would expect to remain active lobbyists before the Board of County Commissioners (BCC) and other County agencies, other than the Public Health Trust.

In determining whether it would be appropriate for you and your firm to continue to lobby the County outside of the PHT, Section 2-11.1(m)(1) must be considered. That section prohibits County Commissioners, the Mayor, departmental personnel, employees and designated contract staff from appearing before any County board or agency to "make a presentation on behalf of a third person, with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person." In effect it bans individuals included in these categories from lobbying anywhere in the County government. That section also prohibits the same individuals

from receiving compensation in any form “for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person.”

While the PHT Board of Trustees is not directly included in the classes of individuals covered under the latter section, the BT appears to be made subject to ethical requirements similar to those that govern the BCC under the following language contained in subsection 25A-3(c) of the Miami-Dade County Code, which is included in the ordinance establishing the PHT: “...wherever in the Conflict of Interest Ordinance reference is made to the Board of County Commissioners, that reference shall be deemed to be a reference to the voting members of the Board of Trustees of the Public Health Trust.”

The application of Section 2-11.1(m)(1) of the Ethics Code to the BT is made less definitive, however, by the following language, also in subsection 25A-3(c), that precedes the language equating the BT with the BCC and provides a modified applicability of the Ethics Code to the PHT : “... Section 2-11.1 of the Code of Miami-Dade County, Florida, shall be applicable to the members of the Board of Trustees of the Public Health Trust only in the manner and the extent hereinafter provided. It is declared to be the intent of the Commission, as expressed in this subsection, to provide that the Conflict of Interest Ordinance shall not operate to preclude individuals from serving as Trustees on the basis of interests relating to Miami-Dade County when such interests do not conflict with the Trust.”

The latter language, while unclear about the extent of this modified ethics standard as applied to the BT, could reasonably be interpreted to permit a Trustee to serve on the BT who would otherwise be conflicted under Section 2-11.1(m)(1) due to lobbying activity before other County agencies. Such an interpretation would likely lead to the BT members being classified under Section 2-11.1(b)(2) of the Ethics Code as “autonomous personnel,” governing semi-autonomous authorities, boards of agencies in the County. Such autonomous personnel are not included in the classes of individuals subject to the restrictions in Section 2-11.1(m)(1), but are instead covered in Section 2-11.1(m)(2), which restricts such personnel from lobbying only the County board or agency on which such persons serve. Under such an interpretation, you could maintain your lobbying practice in the County, provided that you and your firm did not lobby the PHT.

Applying a less strict conflict provision to BT members at the PHT, however, would appear to run contrary to BCC Resolution No. R-1020-11 and Article III, Section 3, of the by-laws of the BT itself. R-1020-11, adopted by the BCC on November 11, 2011, long after Section 25A of the Miami-Dade Code establishing the PHT was adopted. The 2011 Resolution was passed in the wake of a report by the Miami-Dade County Hospital Governance Taskforce, and mandated adoption of certain Taskforce recommendations, including the following:

“The governing board [of the PHT] shall reflect and embrace a rigorous conflict of interest policy which includes a heightened standard, eliminating both the perception of as well as any actual conflict of interest for board members. Board members shall have no conflicts of interest for one year before or after serving, personally or as stakeholders, in the outcome of their decisions. The governing body’s sole interest should be in the future of Jackson Health System.”

This heightened conflict of interest standard was adopted by the BT verbatim in Article III, Section 3 of the BT by-laws, along with other ethical requirements for board members and the authorization for

the Ethics Commission to issue opinions thereunder. It should be noted that it is more specific than the language in the BCC's "declaration of intent" in Section 25A-3, and would explicitly bar you from serving on the BT inasmuch as you have lobbied the board less than a year prior to your appointment to it. It would also arguably support the application of the stricter standard prohibiting all lobbying by board members under Section 2-11.1(m)(1) of the Ethics Code. The "appearance of conflict" standard applied by the by-laws, the highest ethical standard for any Miami-Dade County agency, would also need to be considered in evaluating the circumstances in any conflict question, and would imply a stricter ethical standard than that applied to the BCC itself.

Ordinarily, a resolution adopted by a governing body such as the BCC would not take precedence over an ordinance, where the provisions of the resolution conflict with those of the ordinance. However, it is also well-established in the County and recognized in opinions generated by the Ethics Commission, that any individual County department, board or agency may administratively adopt stricter ethics guidelines than those contained in the Conflict of Interest and Code of Ethics Ordinance. Examples of such stricter requirements include rules against acceptance of any gifts by employees engaged in County procurement activities or in the Water and Sewer Department of the County. The adoption by the BT of this stricter standard, subject to its authorized interpretation by the Ethics Commission, may, therefore, be interpreted to impose a stricter standard than any other standard created under County ordinance.

The "heightened conflict of interest standard" imposed under Article III, Section 3 of the BT By-laws cannot mean a lesser standard for conflicts than those governed by the Code of Ethics ordinance, which is considered to create a minimum standard of ethics for County officials and employees. It must mean a greater standard for many conflicts, and certainly not less than the minimum standard imposed by County ethics requirements. It is for this reason that it should be interpreted to provide for greater than the minimum standard applicable to the BT of the PHT under previously existing county ordinances, and one that is in accord with the PHT's own by-laws.

It is acknowledged that the inconsistent message contained in some of the language in Section 25A-3 creating the "modified" standard, when considered with the heightened standard referenced in R-1020-11 and Article III, Section 3 of the BT by-laws, is a source of confusion. However, in the absence of clear guidance from the BCC resolving these inconsistent standards, it is appropriate for those conflicting standards to be resolved in favor of the higher standard self-imposed by the PHT Board of Trustees, rather than a lesser one based upon an uncertain interpretation of a prior ordinance.

It should be noted that the PHT and its BT have a unique relationship with the BCC, which has formed the PHT as an instrumentality of the County and charged it with responsibility for the operation, governance and maintenance of the designated facilities of the Jackson Health System. In addition to maintaining budgetary control over the PHT, as well as the power to control by ordinance its powers and functions, and to remove BT members for cause, it also jointly engages with the BT on issues of mutual concern. The two boards conduct an Annual Joint Meeting to consider Planning Recommendations for Designated Facilities (Section 25A-3(b)(3), where its members sit alongside BCC members on the dais in the Commission Chambers. Members of the PHT also serve alongside County Commissioners on the Trust Compensation and Evaluation Committee (Section 25A-3(f)(5) to consider the compensation of the PHT CEO. BT members also sit alongside designees of the Mayor and County Commission Chair on the Trust/Medical Schools Annual Operating Agreement

Negotiating Committee (Section 25A-3(f)(6)) and the Trust/Miami-Dade County Annual Operating Agreement Committee.

The joint operations of the BCC and BT raise particular concerns under the heightened standard's requirement that any perception of a conflict of interest be eliminated at the PHT. An active lobbyist who appears one day as a virtual colleague of BCC members at a joint meeting may appear on another day at the dais lobbying the BCC on a major contested contract award. It is understandable that, upon perceiving those dual roles, a person or entity vying with that lobbyist for the contract award could question the fairness of the process.

Moreover, while the surface legal issue involved here may be a close one, the ethical judgment at the heart of this matter is not. The County Commission and the Board of Trustees at the PHT proclaimed their commitment to a higher standard of ethics at the Trust in 2011. This was done in the wake of serious financial problems that threatened the PHT and the County's investment in continued quality health care at its publicly supported medical facilities. A countywide Hospital Governance Taskforce composed of prominent citizens lent substantial time and considerable expertise into compiling a report documenting the issues facing the Trust, and putting forth recommendations encompassing a higher standard of ethics. The County's commitment to the public to establish that higher standard should now be honored rather than discarded based upon a debatable legal theory.

Accordingly, it is my opinion that in order for you to serve on the Board of Trustees of the Miami-Dade County Public Health Trust, you would need to discontinue your and your firm's lobbying practice before the Miami-Dade County Commission, which I understand is a condition that you are not likely to accept. I appreciate your cooperation in assisting us in our consideration of this matter. I want to underscore that this opinion should not, in any way, be interpreted to reflect negatively upon your personal ethics or those of your law firm, and in no way diminishes your laudable offer to serve your community.

Sincerely,



Joseph M. Centorino  
Executive Director and General Counsel  
Miami-Dade Commission on Ethics and Public Trust

*Albert E. Dotson, Jr., Esquire*  
*Tel: 305-350-2411*  
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[adotson@bilzin.com](mailto:adotson@bilzin.com)

July 1, 2016

Joe Arriola, Chairman  
Public Health Trust Board of Trustees  
Jackson Memorial Hospital  
1611 N.W. 12th Avenue  
West Wing, First Floor, Room 108D  
Miami, FL 33136

Carlos A. Migoya, President and  
Chief Executive Officer  
Jackson Health System  
Executive Offices  
1611 N.W. 12th Avenue  
Miami, FL 33136

***Re: Appointment to Miami-Dade County Public Health Trust  
Board of Trustees***

Dear Gentlemen:

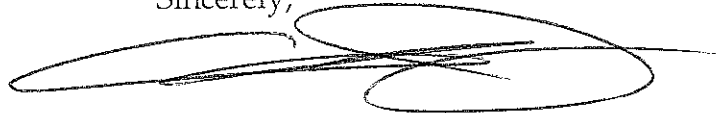
I was honored and excited to be considered for, and then appointed to, the Miami-Dade County Public Health Trust Board of Trustees. This appointment would have been my second opportunity to serve on the Public Health Trust Board of Trustees. After my most recent appointment, it was brought to my attention that the amended by-laws of the Public Health Trust and a 2011 Miami-Dade County Commission Resolution most probably prevent me from serving on the Public Health Trust Board of Trustees. Enclosed is a copy of the opinion issued by Joe Centorino, Executive Director and General Counsel of the Miami-Dade Commission on Ethics and Public Trust.

As you will read from the enclosed communication, it is Mr. Centorino's belief that my current representation of clients seeking government approvals for their development or to support their selection in response to a Miami-Dade County solicitation would have to cease if I accepted the appointment to the Public Health Trust Board of Trustees. Since my legal practice consists primarily of representing such clients seeking those approvals and support from Miami-Dade County, it is not possible for me to serve the Public Health Trust and maintain my current legal practice. As such, I must tender my resignation for the Public Health Trust Board of Trustees.

This does not, however, mean that I am unavailable to assist in the great work of the Public Health Trust. It would be an honor to be called on from time to time to serve in other capacities as you see fit.

Again, thank you for the honor and for considering me to serve on the Board of Trustees.

Sincerely,



Albert E. Dotson, Jr.

AED/eo  
Enclosure

cc: The Honorable Carlos Gimenez, Mayor  
The Honorable Jean Monestime, Chairman, Board of County Commissioners  
Joseph M. Centorino, Executive Director and General Counsel  
Mary Cagle, Esquire, Miami-Dade County Inspector General

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June 22, 2016

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Bilzin Sumberg Baena Price and Axelrod, LLP  
1450 Brickell Avenue Ste. 2300  
Miami, FL 33131

SENT BY EMAIL AND U.S. MAIL

Re: INQ 16-163 Appointment of Albert Dotson, Esq. to Miami-Dade County Public Health Trust Board of Trustees

Dear Mr. Dotson:

The staff opinion that we have discussed regarding your appointment to the Miami-Dade County Public Health Trust Board of Trustees is attached. As it indicates, I have opined that, pursuant to the heightened standard of ethics adopted by the Trust, an appointee to the Board of Trustees may not act as a lobbyist before the Miami-Dade County Commission. As this is only a staff opinion at this point, it is subject to review by the full Miami-Dade Commission on Ethics and Public Trust. Due to the importance of the issue it addresses, I intend to submit it for approval to the Ethics Commission at its next regular meeting, which is scheduled to take place on Wednesday, July 13, at 10:00 AM in our office at 19 W. Flagler Street, Suite 820, in Miami. Anyone with an interest in this opinion, and wishing to address it, will be permitted to do so at that time.

Sincerely,

Joseph M. Centorino  
Executive Director and General Counsel  
Miami-Dade Commission on Ethics and Public Trust

cc: Carlos Gimenez, Mayor, Miami-Dade County  
Jean Monestime, Chair, Miami-Dade County Commission  
Joe Arriola, Chair, Board of Trustees, Miami-Dade County Public Health Trust  
Carlos Migoya, CEO, Jackson Health Systems  
Mary Cagle, Miami-Dade County Inspector General

**RQO 16-03 Albert Dotson, Esq., Appointee to Board of Trustees, Miami-Dade County Public Health Trust**

On July 13, 2016, the Miami-Dade County Commission on Ethics and Public Trust adopted INQ 16-163 as RQO 16-03. In the opinion it was determined that Mr. Dotson, a frequent lobbyist at the Miami-Dade County Commission (BCC), could not serve as a member of the Board of Trustees of the Public Health Trust (PHT), based upon the Heightened Conflict of Interest Standard, including elimination of the “perception” of an actual conflict, contained in Article III, Section 3 of the PHT by-laws. In adopting the opinion, the Commission ruled that the opinion would be binding on a future prospective PHT board member who personally lobbied the BCC, but not necessarily on an individual who only was a member of a firm that included individuals who lobbied the BCC, where the prospective member did not do so. The Commission indicated that in the event of a prospective appointment made under the latter circumstances, the issue of whether there would be a conflict under Article III, Section 3 of the by-laws should be evaluated under the facts pertinent to that situation.

Joseph M. Centorino  
Executive Director and General Counsel