

IJA 05-39

**Meyers, Robert (COE)**

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**From:** Meyers, Robert (COE)  
**Sent:** Tuesday, March 15, 2005 4:51 PM  
**To:** 'Jay Carmichael'  
**Subject:** RE: Ethics matter regarding ex-officio, non-voting boardmembership

Mr. Carmichael,

I reviewed your questions and conferred with the Ethics Commission's staff general counsel and she and I are of the opinion that, as a general proposition, the County's Conflict of Interest and Code of Ethics Ordinance applies to individuals who sit on the Port of Miami Crane Management Board of Directors. However, if you sat on the Board as an ex-officio, non-voting director, 2-11.1(v) would not apply to you. With regard to your question about disclosing confidential information, the test is whether a board member discloses information not otherwise available to the public. If you decide to sit on this board, then you would be bound by this provision. I agree with your assessment that public boards rarely are privy to information that would be considered confidential. Finally, you accurately summarized subsection(m), which bars boards members from appearing in any court or tribunal on behalf of a third party seeking relief from the County board on which such person serves. Under the circumstances, it would be a conflict of interest if your law firm appeared before the board on which you serve. On the other hand, if a firm's client were to make a claim against the County, as opposed to the PMCM Board, no conflict of interest exists.

If you wish to discuss the above with me in greater detail, please contact me at your convenience.

Sincerely,

Robert Meyers, Executive Director  
Miami-Dade Commission on Ethics and Public Trust

-----Original Message-----

**From:** Jay Carmichael [mailto:jcarmichael@gunster.com]  
**Sent:** Friday, March 11, 2005 11:36 AM  
**To:** rmeyers@miamidade.gov  
**Subject:** Fwd: Ethics matter regarding ex-officio, non-voting boardmembership

## **Meyers, Robert (COE)**

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**From:** Jay Carmichael [jcarmichael@gunster.com]  
**Sent:** Tuesday, March 08, 2005 5:31 PM  
**To:** Meyers, Robert (COE)  
**Subject:** Ethics matter regarding ex-officio, non-voting board membership

Mr. Meyers,

Thank you for discussing the ethics issue that I raised and for forwarding the below question to Mr. Walker. Thank you especially for your responsiveness to this inquiry.

**Background:** I am an attorney with the Gunster Yoakley Stewart law firm in Miami. I have been asked to consider offering my name for appointment by the Port of Miami Crane Management Company (PMCM) Board of Directors to fill an ex-officio, non-voting director position on the PMCM Board. I will not be providing legal advice to the Board. I am very interested in filling this position but must fully appreciate the potential for conflict with my law firm's practice.

According to a discussion with Mr. Jess McCarty, County Attorney's Office, the PMCM is a public, not-for-profit corporation. The corporate charter establishes the business of the corporation as maintenance and repair of the gantry cranes at the Port of Miami. PMCM operates pursuant to an agreement with Miami-Dade County through the County Manager.

The Port of Miami owns and schedules the cranes to be employed in cargo offloading. Fees for the use of the cranes by shipping lines are paid directly to the County Seaport Department (Port of Miami) and expenses of the PMCM operations are paid by the Port of Miami to PMCM. The Chairperson of the Board of Directors is the Port Director, Mr. Charles Tousley (305) 371-7678. The CEO of PMCM is Mr. Ed Bello (305) 374-1552.

**Issue:** Would my service on the PMCM Board of Directors in an ex-officio, non-voting capacity, subject my firm to the conflict of interest provisions contained in section 2.11.1 of the Code of Metropolitan Dade County Florida?

**Discussion:** Several provisions of section 2.11.1 of the Code seem relevant to this analysis.

(b) (2) seems to be the closest definition of applicability related to the position that I may fill on the Board. It includes Board members but requires that they be entrusted with the day to day policy setting, operation and management of certain defined County functions. Perhaps the fact that my position is ex-officio and non-voting excludes me from the definition.

(b) (4) defines "advisory personnel" which may include the function of an ex-officio, non-voting Board member, however, the PMCM Board does not appear to be a County advisory board whose primary responsibility is to give advice to the Board of County Commissioners.

If I would fall within the ambit of (b) (2) or (b) (4) then certain other proscriptions may apply to my law firm and to me. E.g. Subsection (h) would prohibit me from engaging in "employment" that would "require or induce" me to disclose confidential information gained through the position with the County. (Would I be likely to have access to confidential information given that Board of Director meetings are open to the public since PMCM is a public corporation?)

Subsection (m) (2) states that a (b) (2) or (b) (4) person may not appear in any court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board on which such person serves. (It is conceivable in our maritime practice that a client may desire to make a claim against PMCM relating to cargo handling.)

There may be other proscriptions that could apply either directly or that may pertain through an "appearance of a conflict." If the determination is made that I fall within the ambit of either (b) (2) or (b) (4) then further review will be necessary.

Respectfully,  
Jay Carmichael

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