

Ethics (COE)

JNQ 06-45

From: Ethics (COE)
Sent: Wednesday, March 15, 2006 12:40 PM
To: 'Richard Lydecker'
Subject: RE: Conflict opinion

Correct.

From: Richard Lydecker [mailto:rl@lydeckerlaw.com]
Sent: Wednesday, March 15, 2006 12:24 PM
To: Ethics (COE)
Subject: RE: Conflict opinion

Robert, thank you for your prompt response. Just to clarify, we are fine so long as the Mayor does not receive any financial benefit from the referral business? Thanks again. Richard.

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From: Ethics (COE) [mailto:ethics@miamidade.gov]
Sent: Wednesday, March 15, 2006 11:13 AM
To: Richard Lydecker
Subject: RE: Conflict opinion

Mr. Lydecker,

I understand that you met yesterday with two employees from my office and Ms. Ramos summarized the meeting for me. The critical facts are that Mayor Manny Diaz is joining your firm as a partner, he will bring with him several clients from his previous firm, and Mr. Diaz' compensation will be based exclusively on revenues generated from these clients. The firm, however, will share some of the revenues from these clients. Moreover, you advised Ms. Ramos that another law firm is contemplating making referrals to your law firm and one of the partner's at that law firm is also a partner at a lobbying firm. This lobbying firm does not currently lobby in the City of Miami but could potential lobby there. You wish to know whether your firm can receive referrals from this other firm, especially given its relationship to the firm that may lobby in the City of Miami and the fact that the Mayor of Miami is a partner in your law firm.

The question to probe is whether the firm that lobbies before the City of Miami which in turn is referring cases to another firm that has the Mayor of Miami as one of its partners creates a conflict of interest for the Mayor. The analysis turns on two important factors. The first one being the fact that, according to the partnership arrangement you have described, the Mayor will not benefit from these referrals, as he is solely compensated from his client base. Secondly, it is necessary to examine the formality of the arrangement between your firm and the referring law firm. If it is an occasional, incidental referral, then there appears to be no conflict. On the other hand, if there is an ongoing commitment to refer cases to your firm, then there could be a conflict if the abovementioned lobbying firm appears before the Mayor during the time when the agreement between your firm and the referring firm is in effect. However, because the Mayor will not financial benefit from any referral business, then he would be permitted to participate in and vote on matters presented by the lobbying firm with ties to the referring law firm, even if there were a formal agreement in place between your firm and the referring firm.

3/15/2006

Obviously, if the partnership agreement between the firm and the Mayor changes, we may want to revisit these issues. If you wish to discuss in greater detail, please feel free to contact me at your convenience.

Sincerely,

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

From: Ethics (COE)
Sent: Thursday, March 09, 2006 1:34 PM
To: 'Richard Lydecker'
Subject: RE: Conflict opinion

Mr. Lydecker,

Yes, I received your e-mail and someone in my office will be contacting you shortly. There are a few matters we need clarified before we can go on record concurring with the State's opinion.

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

From: Richard Lydecker [mailto:rl@lydeckerlaw.com]
Sent: Wednesday, March 08, 2006 5:33 PM
To: Ethics (COE)
Subject: FW: Conflict opinion

To whom it may concern:

I know how busy you are; but can you confirm that you have received my request (See below) and if possible; provide some kind of ball park estimate of when you may be able to respond. Thanks for your assistance.
Richard.;

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From: Richard Lydecker [mailto:rl@lydeckerlaw.com]
Sent: Monday, March 06, 2006 3:16 PM
To: 'ethics@miamidade.gov'
Subject: FW: Conflict opinion

Can you tell me whether the County's Ethic's rules concur with the States Ethic's opinion—See below. The fact patterns is as set forth as well. I have also received an oral approval from the Florida Bar, and I anticipate their written response in the next couple of days. I know how busy you all are, and I appreciate your assistance. I called, but no one answered the phone at your office. Thanks in advance for your assistance.
Richard Lydecker.

Richard J. Lydecker, Esq.
Lydecker, Diaz, Lee, Behar, Berga & De Zayas

3/15/2006

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From: DOSS.VIRLINDIA [mailto:DOSS.VIRLINDIA@leg.state.fl.us]

Sent: Monday, March 06, 2006 1:45 PM

To: rl@lydeckerlaw.com

Subject: Conflict opinion

Dear Mr. Lydecker:

This is in response to your request for an informal opinion regarding the limitations applicable under the Code of Ethics for a partner of your law firm who also serves as an elected official.

You state that the partner/official's compensation from the firm (XYZ) is derived solely from his client base, and that he does not participate in the general revenues of the firm. You also state that the firm does no business with the official's City. You state that the firm accepts referrals from another firm (W) and that W does no work for the City or for any vendors of the City. One of W's partners is also a partner in a lobbying firm which will do business with the City.

The statutes potentially applicable here are Sections 112.313(3), (7), and (4).

Section 112.313(3)

This section prohibits an official acting in his public capacity from purchasing or renting any realty, goods, or services, for his agency from a business entity in which he, his spouse, or his child serves as an officer or director or has a material interest. It also prohibits an official acting in his private capacity from selling or renting any realty, goods, or services, to his agency from a business entity in which he, his spouse, or his child serves as an officer or director or has a material interest.

This provision is not implicated here because the City is not purchasing any services from XYZ. However, the firm will not be able, while this official is a partner, to sell services to the City. See, CEO's 81-49 and 87-85.

Section 112.313(7)

The first part of this section prohibits an official from having an employment or contractual relationship with any business entity regulated by or doing business with the official's agency.

Although he does not participate in revenues from XYZ, since he is a partner, the official would have a contractual relationship with the firm. However, from the information you provided, it does not appear that XYZ is either regulated by or doing with the City. Again, the firm will not be able to sell services to the City while the official is a partner or employee of the firm. In addition, as each attorney of a firm is considered to have a contractual relationship with each client of their firm, absent some exception to the statute, the firm can have no clients who are regulated by or who do business with the City. See, CEO 04-9.

The second part of Section 112.313(7) prohibits an official from having any contractual relationship which gives rise to a continuing or frequently recurring conflict of interest, or which would impede him in the performance of his public duties. This provision establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct, or whether they coincide to create a situation which "tempts dishonor." Zerweck v. Commission on Ethics, 409 So.2d 57 (Fla. 4th DCA 1982).

This provision is directed toward economic considerations, rather than personal bias or affinity. See generally, CEO 95-17. The concern here appears to be that the official would somehow be predisposed toward the lobbying firm (which will do business with the City) because one of its partners is also a partner in W, which refers work to XYZ. However, from the facts you have provided, I can identify no economic consideration which would tempt the official to disregard his public duty. Presumably, XYZ pays a referral fee to W for the cases W refers to it, undercutting any argument that the official would favor the lobbying firm in an effort to generate referrals for XYZ from W. More significantly though, since the official's income does not come from XYZ's revenues, there would be no motive for him to try and boost those revenues.

3/15/2006

In CEO 86-37, the Commission found no prohibited conflict of interest under Section 112.313(7) would be created were a member of a mayor's law firm to be an equity investor in a business entity which proposed to contract with the city to lease and develop property owned by the city. The Commission found that the mayor's contractual relationship was with his firm member, not with the business entity. Similarly, here the official's contractual relationship is with his firm, rather than with W or with the partner of W who is also a partner in a lobbying firm. Based on the rationale of CEO 86-37, it does not seem to me that a conflict would be created in the situation you describe.

Section 112.313(4)

This provision prohibits an official from accepting any thing of value when he knows, or under the circumstances should know, that it is being offered in an effort to influence him in his official decisionmaking or actions. Referrals could be considered a "thing of value" and the argument could be made that referrals were being given by W to XYZ for the purpose of influencing the official to act favorable toward the lobbying firm. Again though, the payment of a referral fee and the fact that the official's compensation is not linked to income created as a result of the referrals cuts against any such concern. Therefore, it does not seem to me that this provision is implicated here.

I believe this covers the areas you spoke with Phil about last week, and is consistent with his verbal response. If you need any additional information or a more in-depth analysis of any particular situation, or would like to discuss any of the issues raised, please do not hesitate to call or e-mail me. Phil did also mention that you had some questions about how Dade County's ethics regulations would apply to this situation. Our office would not be able to address that, so if you haven't already done so, you might want to speak to someone at their Commission on Ethics and Public Trust at (305) 579-9093 or visit their website at: www.co.miami-dade.fl.us/ethics/.

The referenced Commission on Ethics Opinions (CEO's) are available on our website at: www.ethics.state.fl.us. Please remember that this is an informal opinion by staff and is not a formal opinion of the Commission. Public officers and employees have the right to request a formal opinion pursuant to Section 112.322(3), Florida Statutes. This opinion is based only on the facts you have submitted, if those facts are not as stated you should not rely on the opinion without first contacting the Commission.

I hope you will find this helpful. Please let me know if I can do anything else for you.

Virindia Doss
Senior Attorney
Commission on Ethics
(850) 488-7864