

KERDYK REAL ESTATE

RQO 01-11

S I N C E 1 9 2 6

March 7th, 2001

Mr. Robert Myers
19 West Flagler Street Unit 220
Miami, Florida 33130

Dear Mr. Myers,

Thank you for speaking with me last week. As I mentioned in our conversation I would appreciate it if you would render an opinion regarding an issue that I have related to my real estate company.

For clarification I am the owner of Kerdyk Real Estate, a company that specializes in the sales, leasing and management of property in the Coral Gables area. Furthermore, I am a City Commissioner in Coral Gables.

My office, Kerdyk Real Estate, took a listing at 351 San Lorenzo Avenue on October 5th, 2000. Our exclusive right of sale listing agreement provided that Kerdyk Real Estate was a transaction broker and receive compensation by the seller. When we took the listing the seller disclosed that he had negotiated with the Rouse Company however, his negotiation with them had fallen through.

The seller insisted that, should negotiations resume during our listing, the commission be reduced on the property. We began marketing the property immediately by placing it on Multiple Listing Service, advertising and preparing marketing brochures. We did an extensive mail-out. We showed it on numerous occasions.

At the end of January during the middle of our listing contract, the seller informed us that he had decided to sell his property to the Rouse Company. The property has closed and the commission is currently in the sellers attorney escrow pending the decision from the Dade County ethics board.

As a Coral Gables City Commissioner, my question is focused on the fact that the Rouse Company purchased the property. The Rouse Company is planning a large-scale retail development in Coral Gables. They have leased 8 acres from the city and subsequently then purchase another 12 acres surrounding the city's land. The last vote on the project was on February 8, 2000; this vote was on the lease amendment authorizing execution of amended and restated master lease agreement. Rouses ground breaking ceremony was held on March 28, 2000. The property they have purchased at 351 San Lorenzo is located directly across the street from the project and as I understand will not be part of the already approved development.

I would appreciate it if you would please render an opinion regarding whether there is a conflict for my office to receive compensation from the seller as per our agreement. In addition, if the Rouse Company comes back to the commission in a matter that needs a vote, would I be able to participate or would I have to recuse myself. Should you need any additional information please contact me.

Sincerely,



William Kerdyk, Jr.

WHK/lc

March 9, 2001

William H. Kerdyk, Jr.
President – CEO
Kerdyk Real Estate
2631 Ponce de Leon Blvd.
Coral Gables, Florida 33134

Re: Request for Opinion

Dear Commissioner Kerdyk:

I am in receipt of your letter dated March 7, 2001, which I received via fax on March 7, 2001. You wish to know whether the facts you present in your letter create a conflict of interest for you as a member of the Coral Gables City Commission.

You indicate that your real estate firm took a listing on a property on October 5, 2000 as a transaction broker and would receive compensation from the seller. You state in your fax that the seller disclosed to you at the time of the listing that he had negotiated with the Rouse Company but a sale was never consummated. After your firm took the listing, the Rouse Company eventually purchased the property, apparently closing in the end of January 2001. The property in question is across the street from a large-scale retail project that the Rouse Company is planning in the city of Coral Gables. Prior to the sale of this property, Rouse executed a lease with the city of Coral Gables, authorized by the City Commission, wherein Rouse agreed to lease eight acres from the city and subsequently purchased another twelve acres surrounding the city's land. The City Commission's vote on the lease amendment occurred on March 28, 2000. You are seeking an opinion from the Ethics Commission to determine whether your office is entitled to receive compensation from the seller. Further, you wish to know whether you can participate in matters involving the Rouse Company in the future.

Regarding the acceptance of compensation from the seller of the property located across the street from the planned retail development, the Ethics staff counsel and I are of the opinion that no legal conflict exists that would prohibit your firm from accepting the commission. We assume that the property sold for fair market value and the seller's decision to sell the property to the Rouse Company was an independent one and that your firm treated the transaction between the seller and Rouse in the same manner it would treat other similarly-situated parties.

Despite the fact there appears to be no legal conflict, there are always questions of perception that follow elected officials. In this case, it could be argued once it was publicized that Rouse would be pursuing a large retail project in a certain part of Coral Gables, which your City Commission approved, the value of adjacent properties increased in value, resulting in potentially larger commissions for any real estate firms selling property in the surrounding areas. I simply want to point this out as these "political realities" may affect your decision to accept the commission as per your agreement with the seller.

As far as voting on matters involving the Rouse Company in the future, it depends upon the issue before the City Commission. It would seem unethical if you as a city commissioner participated in and voted on issues regarding the property located at 351 San Lorenzo Avenue. It would be difficult for me to give you any advice about other questions with respect to the Rouse Company. The prudent thing to do would be to ask specific questions about these items as they arise.

Please understand that I do not have the formal legal authority to issue binding ethics opinions; that power rests with the Miami-Dade Ethics Commission. If you would like to have these questions presented to the Ethics Commission for its consideration, I can arrange that for you.

Sincerely,

Robert A. Meyers
Executive Director