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STAFF GENERAL COUNSEL

March 5, 2003

The Honorable Rafael Cabrera, Jr.
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

RE: REQUEST FOR OPINION

Dear Commissioner Cabrera:

You requested an opinion regarding any restrictions and possible conflicts related to your corporation's contractual relationships with various entities and individuals. Specifically, you presented three questions for review.

- 1) May the Commissioner's corporation contract with individuals or business entities which have contractual relationships with the City of Coral Gables?
- 2) May the Commissioner's corporation contract with individuals or business entities which are subject to regulation by the City of Coral Gables?
- 3) May a company, which has a contractual relationship with the Commissioner's corporation, contract with individuals or business entities which have either contracts with or are subject to regulation by the City of Coral Gables, and where the Commissioner will neither receive any benefit nor be involved in the contract?

According to the facts outlined in a memorandum from City Attorney Elizabeth Hernandez, you are the sole officer and director of Cabrera Benefits Group, Inc. (CBG). Mr. Curtin is the sole owner of Curtin Insurance Group LLC (CIG). CBG is in the process of finalizing a new joint company with (CIG), thereby allowing the new company, CCIG, to jointly enter into business relationships and share the profits and expenses of all such joint ventures. In the meantime, both CBG and CIG would maintain separate business contracts with other vendors, not shared jointly by

you and Mr. Curtin. Presently, CIG submits business proposals to companies which have contracts with or are subject to regulation by the City of Coral Gables ["Coral Gables"]. CBG does not assist in these proposals or share in the profits obtained.

In response to question one, The Conflict of Interest and Code of Ethics Ordinance, which is applicable to the municipalities, does not preclude you from entering into contracts with companies which have contractual relationships with Coral Gables, in other words city vendors. However, should one of those companies come before the Coral Gables Commission seeking new business or a contract renewal, modification, extension, etc., you would be prohibited from participating in the discussion of the item or voting on said item. Section 2-11.1 (d) provides,

“ Additionally, no person included in the term defined in subsection (b) (1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary... or if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally.”

Furthermore, two other provisions of the Code bear on this set of facts. One is the Code's prohibition on exploiting one's official position. Section 2-11.1 (g) provides in part, that no government official or employee shall use his or her "official position to secure special privileges or exemptions." The second, Section 2-11.1 (h) prohibits a government official and employee from engaging in business activities that may require him or her to disclose confidential information and using such information for personal gain.

Also, you would be legally prohibited from participating in such processes where you or a member of your immediate family has a financial interest. Section 2-11.1 (n), "Actions prohibited when financial interests involved," states that:

“No person included in terms defined in subsections (b)(1) through (6) shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest.”

In response to question two, The Conflict of Interest and Code of Ethics Ordinance does not preclude you from entering into contracts with companies which are subject to regulation by Coral Gables. Generally, most companies operating within Coral Gables are subject to various laws, regulations and rules promulgated by the City. Should a situation arise however, that requires an individual or company doing business with either of your companies, CBG and CCIG, to come before the Commission, you would have to recuse yourself from said matter.

In response to question three, The Conflict of Interest and Code of Ethics Ordinance does not prohibit CIG from entering into contracts with companies or individuals which have either contracts with or are subject to regulation by the City of Coral Gables, and where the Commissioner will neither receive any benefit nor be involved in the contract. Again, as noted above, should CIG seek city business or come before the Coral Gables Commission on a contract matter, the Commissioner would be prohibited from participating in the discussion or voting on said matter.

In addition to the foregoing analysis, CCIG and CBG may not contract directly with the Coral Gables, absent a waiver by the Coral Gables Commission, due to your controlling financial interest in both entities. Section 2-11.1 (b)(8) of the Code defines a “controlling financial interest” as ten (10) percent or more of outstanding capital stock. Moreover, Section 2-11.1 (c) and (d) prohibit elected officials from transacting business with the municipality they serve directly or through firms in which they or their immediately family have a controlling financial interest. Section 2-11.1 (c) provides certain waiver provisions only after findings by an affirmative vote of two-thirds (2/3) of the entire Commission that:

- (1) An open-to-all sealed competitive bid has been submitted... or
- (2)
- (3) The property or services to be involved in the proposed transaction are unique and the County cannot avail

itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements, or

- (4) That the property or services to be involved in the proposed transaction are being offered to the County at a cost of no more than 80% of fair market value based on a certified appraisal paid for by the provider, and
- (5) That the proposed transaction will be to the best interest of the County.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

Cc: Elizabeth Hernandez

MEMORANDUM

To: Robert Meyers
From: Christina Prkic, Staff Attorney
Re: Inquiry: Honorable Rafael Cabrera, Jr. Commissioner, City of Coral Gables
Date: March 4, 2003

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Background

The Honorable Rafael Cabrera, Jr., Commissioner in the City of Coral Gables, is requesting an opinion regarding any restrictions and possible conflicts related to his corporation's contractual relationships with various entities and individuals. Specifically, he presents three questions for review.

- 1) May the Commissioner's corporation contract with individuals or business entities which have contractual relationships with the City of Coral Gables?
- 2) May the Commissioner's corporation contract with individuals or business entities which are subject to regulation by the City of Coral Gables?
- 3) May a company, which has a contractual relationship with the Commissioner's corporation, contract with individuals or business entities which have either contracts with or are subject to regulation by the City of Coral Gables, and where the Commissioner will neither receive any benefit nor be involved in the contract?

Facts

Commissioner Cabrera is the sole officer and director of Cabrera Benefits Group, Inc. (CBG). Mr. Curtin is the sole owner of Curtin Insurance Group LLC (CIG). CBG is in the process of finalizing a new joint company with (CIG), thereby allowing the new company, CCIG, to jointly enter into business relationships and share the profits and expenses of all such joint ventures. In the meantime, both CBG and CIG would maintain separate business contracts with other vendors, not shared jointly by Commissioner Cabrera and Mr. Curtin. Presently, CIG submits business proposals to companies which have contracts with or are subject to regulation by the City of Coral Gables ["Coral Gables"]. CBG does not assist in these proposals or share in the profits obtained.

Argument

• **Question One**

The Conflict of Interest and Code of Ethics Ordinance, which is applicable to the municipalities, does not preclude Commissioner Cabrera from entering into contracts with companies which have contractual relationships with Coral Gables, in other words city vendors. However, should one of those companies come before the Coral Gables Commission seeking new business or a contract renewal, modification, extension, etc, the

Commissioner would be prohibited from participating in the discussion of the item or voting on said item. Section 2-11.1 (d) provides,

“ Additionally, no person included in the term defined in subsection (b) (1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary... or if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally.”

Furthermore, two other provisions of the Code bear on this set of facts. One is the Code’s prohibition on exploiting one’s official position. Section 2-11.1 (g) provides in part, that no government official or employee shall use his or her “official position to secure special privileges or exemptions.” The second, Section 2-11.1 (h) prohibits a government official and employee from engaging in business activities that may require him or her to disclose confidential information and using such information for personal gain.

Also, Commissioner Cabrera would be legally prohibited from participating in such processes where he or a member of his immediate family has a financial interest. Section 2-11.1 (n), “Actions prohibited when financial interests involved,” states that:

“No person included in terms defined in subsections (b)(1) through (6) shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest.”

- **Question Two**

The Conflict of Interest and Code of Ethics Ordinance does not preclude Commissioner Cabrera from entering into contracts with companies which are subject to regulation by Coral Gables. Generally, most companies operating within Coral Gables are subject to various laws, regulations and rules promulgated by the City. Should a situation arise however, that requires an individual or company doing business with the Commissioner’s company to come before the Commission, he would have to recuse himself from said matter.

- **Question Three**

The Conflict of Interest and Code of Ethics Ordinance does not prohibit CIG from entering into contracts with companies or individuals which have either contracts with or are subject to regulation by the City of Coral Gables, and where the Commissioner will neither receive any benefit nor be involved in the contract. Again, as noted above, should CIG seek city business or come before the Coral Gables Commission on a contract

matter, the Commissioner would be prohibited from participating in the discussion or voting on said matter.

Conclusion

In addition to the foregoing analysis, CCIG and CBG may not contract directly with the Coral Gables, absent a waiver by the Coral Gables Commission, due to Commissioner Cabrera's controlling financial interest in both entities. Section 2-11.1 (b)(8) of the Code defines a "controlling financial interest" as ten (10) percent or more of outstanding capital stock. Moreover, Section 2-11.1 (c) and (d) prohibit elected officials from transacting business with the municipality they serve directly or through firms in which they or their immediately family have a controlling financial interest. Section 2-11.1 (c) provides certain waiver provisions only after findings by an affirmative vote of two-thirds (2/3) of the entire Commission that:

- (1) An open-to-all sealed competitive bid has been submitted by County person as defined in
- (2)
- (3) The property or services to be involved in the proposed transaction are unique and the County cannot avail itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements, or
- (4) That the property or services to be involved in the proposed transaction are being offered to the County at a cost of no more than 80% of fair market value based on a certified appraisal paid for by the provider, and
- (5) That the proposed transaction will be to the best interest of the County.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

Meyers, Robert (COE)

INQ 02-59

From: Meyers, Robert (COE)
Sent: Thursday, November 21, 2002 2:30 PM
To: 'Hernandez, Elizabeth'
Subject: RE: our discussion today

Liz,

I have had the opportunity to review the attached draft memorandum and have discussed it with my legal staff. You present three separate questions, which I will address one-by-one and then provide you with some general concerns at the end of my reply.

Question #1 : May a corporation whose principal is a city commissioner enter into business relationships with individuals/companies which are involved in contractual relationships with the city?

Under the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, which is the only law that I will interpret for purposes of the questions that have been presented to you, there is no conflict that would preclude the commissioner from entering into a contractual relationship with a current city vendor. If, however, a business relationship is formed between the commissioner's company and the vendor and subsequently the vendor seeks new business or a contract renewal, extension, modification, etc. from the city, clearly the voting conflict section of the County Code prohibits the commissioner from voting on matters involving that vendor. In your discussion section, you identify other sections of the County Code that could be applicable, but I see no reason to examine them, as your analysis is right on point.

Question #2: May the corporation enter into business relationships with business entities which may be subject to regulation by the city?

I assume that these business entities are based in the city of Coral Gables. Generally speaking, every business entity that is located and does business in Coral Gables is subject to the laws, rules and regulations promulgated by the City. If a situation were to arise in which the business entity that is doing business with the commissioner's company decided to seek relief from the City or petition the City, then the commissioner with the business relationship would have to recuse himself from the proceedings, assuming the matter is brought before the City Commission. Otherwise, the County Code does not preclude the commissioner from entering into business relationships with business entities subject to the City's regulations.

Question #3: May a corporation which business relationship with the commissioner's corporation enter into contractual relationships with companies that fall under 1 or 2 above, where the city commissioner is neither involved in the transaction nor will receive any benefit from such contractual relationships?

County law permits the company with a business relationship with the commissioner's corporation to enter into transactions with the companies doing business with the City or subject to the City's regulations. Once again, if this company, which has an existing business relationship with the commissioner's company, seeks city business, the voting conflict section of the County Code would prohibit the commissioner from participating in or voting on these matters.

Hope this helps. If you wish to discuss in greater detail, please contact me.

Robert

It is important to note that the above responses are based on very generic information. I suggest the commissioner use your memorandum and my e-mail as guidelines to follow, but by the same token, recognize that as specific issues come up, they must be analyzed on a case-by-case basis.

Finally, I wanted to comment on the three corporations that are identified in your memorandum -- CBG, CIG and CCIG. Because the commissioner is the sole officer and director of CBG and he is co-owner of CCIG,

11/21/02

these business entities cannot contract directly with the city, absent a waiver from the City Commission. On the other hand, as I see it, CIG is not bound by the same restrictions as the other business entities.

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

From: Hernandez, Elizabeth [mailto:ehernandez@citybeautiful.net]

Sent: Tuesday, November 19, 2002 4:18 PM

To: Robert Meyers (rmeyers@co.miami-dade.fl.us)

Subject: re: our discussion today

Please call me once you have reviewed.

CITY OF CORAL GABLES

OFFICE OF THE CITY ATTORNEY

- MEMORANDUM-

TO: **Honorable Rafael Cabrera, Jr.,** **DATE:** **November 19, 2002**
Commissioner

FROM: Elizabeth M. Hernandez **SUBJECT:** **Legal Opinion: City**
City Attorney **Commissioner contracting**
with companies that have
business relationships with
the City.

You have requested a legal opinion on substantially the following questions:

- Check case - to take into conflict*
1. MAY A CORPORATION WHOSE PRINCIPAL IS A CITY COMMISSIONER (WITH 100% OF THE STOCK) ENTER INTO BUSINESS RELATIONSHIPS WITH INDIVIDUALS /COMPANIES WHICH ARE INVOLVED IN CONTRACTUAL RELATIONSHIPS WITH THE CITY?

MAY THE CORPORATION ENTER INTO BUSINESS RELATIONSHIPS WITH BUSINESS ENTITIES WHICH MAY BE SUBJECT TO REGULATION BY THE CITY?
 3. MAY A CORPORATION WHICH HAS A BUSINESS RELATIONSHIP WITH THE COMMISSIONER'S CORPORATION ENTER INTO CONTRACTUAL RELATIONSHIPS WITH COMPANIES THAT FALL UNDER 1 OR 2 ABOVE, WHERE THE CITY COMMISSIONER IS NEITHER INVOLVED IN THE TRANSACTION NOR WILL RECEIVE ANY BENEFIT FROM SUCH CONTRACUAL RELATIONSHIPS?

FACTS

You have advised that you are presently the sole officer and director of a corporation known as Cabrera Benefits Group, Inc (CBG). Mr. Curtin is the sole owner of Curtin Insurance Group LLC (CIG). You are in the process of finalizing a new joint company named Curtin Cabrera Insurance

Group LLC (CCIG). The two owners will be Cabrera Benefits Group, Inc. and Curtin Insurance Group, LLC. CCIG is being established to allow for CBG and CIG to jointly enter business relationships and share the profits and expenses of all joint ventures. However, both CBG and CIG also have separate business contracts with vendors, which contracts are not shared by the principals. CIG has, or will in the future, submit proposals to companies that either have business relationships at present with, or are regulated by, the city. CBG does not assist in those proposals, nor does it share in the profits obtained.

SHORT ANSWER

As to question one, the Miami-Dade Conflict of Interest and Code of Ethics would not prohibit such a relationship. However, the State Ethics Code may restrict the types of contractual relationships your corporation may be allowed to establish.

As to question two, the Miami-Dade Conflict of Interest and Code of Ethics would not prohibit such a relationship. However, the State Ethics Commission would review such situations on a case by case basis.

As to question three, YES. Section 112.313(7) (a), Florida Statutes, prohibits a city commissioner from holding an employment or contractual relationship with a company that is subject to the regulation of, or is doing business with the City. However, it does not prohibit the commissioner from having a contractual relationship with a business entity which is doing business with a company that is subject to the regulation of, or is doing business with, the City. CEO 93-11 (attached). See also, CEO91-19, CEO 88-43, CEO 85-18, CEO 84-8 and CEO 79-1. In addition, the Miami-Dade Conflict of Interest and Code of Ethics would not prohibit such a business relationship.

DISCUSSION

You have inquired whether a prohibited conflict of interest exists where a city commissioner also contracts, through his separate corporation, with companies that are involved in contractual relationships with the city. The City Code, the Conflict of Interest and Code of Ethics of Miami-Dade County, and Florida Statutes all contain ethics provisions that seek to regulate the conduct of public officers. The application of each of these provisions is as follows:

A. Code of the City of Coral Gables

The City of Coral Gables Charter and Code outline certain limitations imposed on Commissioners while in public office. Sections 25 and 26 require the city commission to deal directly with the manager on issues of the administration of the city. Thus while a director has certain purchasing authority, a city commissioner must always deal directly with the manager on any contract issues affecting the city.

B. Code of Miami-Dade County

Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance, is set forth in section 2-11.1 of the Code of Miami-Dade County. The ordinance extends its jurisdiction to all municipal personnel who serve in positions and capacities comparable to those of Miami-Dade County. § 2-11.1(a), Code of Miami-Dade County. The ordinance prohibits a commissioner from transacting business with the municipality he serves directly or through firms in which he has a controlling financial interest. § 2-11.1(c) and (d), Code of Miami-Dade County. The County Code provides certain waiver provisions for autonomous personnel, quasi-judicial personnel and advisory personnel, and seems to extend the waiver to city commissioners for particular transactions only by affirmative vote of two-thirds (2/3) of the entire Commission, after public hearing. The Commission may only waive the restriction upon finding by two-thirds (2/3) of the entire City Commission that:

- (1) an open to all sealed competitive bid has been submitted, or
....
- (3) the property or services to be involved in the proposed transaction are unique and the City cannot avail itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements, or
- (4) that the property or services to be involved in the proposed transaction are being offered to the City at a cost of no more than 80% of fair market value based on a certified appraisal paid for by the provider, and
- (5) that the proposed transaction will be to the best interest of the City.

Furthermore, an official may not participate in official action directly or indirectly affecting a business in which he or any member of his family has a financial interest. § 2-11.1 (n), Code of Miami-Dade County.

The County ordinance also prohibits commissioners from accepting other employment which would impair their independence of judgment in the performance of their duties. § 2-11.1(j), Code of Miami-Dade County. Likewise, the ordinance prohibits the use of confidential information for personal gain. § 2-11.1(h), Code of Miami-Dade County. Finally, the ordinance prohibits the use or attempt to use one's official position to secure special privileges or exemptions for one's self or others. § 2-11.1(g), Code of Miami-Dade County.

"Controlling financial interest" is defined as the ownership of ten percent or more in a firm, partnership, or other business entity § 2-11.1(b)(8), Code of Miami-Dade County.

Additionally, a commissioner is prohibited from voting or participating in any way in any matter presented to the commission if he would be affected in a manner distinct from the manner in which it would affect the public generally. § 2-11.1(d), Code of Miami-Dade County.

The Miami-Dade County Commission of Ethics and Public Trust, Executive Director has been

considering this issue and will advise whether he concurs with the opinions expressed herein where the Commissioner does not use his position to obtain special benefits for himself or others.

C. Florida Statutes

The Ethics statutes prohibit a city commissioner from entering into any contractual relationship with any business entity that is subject to regulation by, or that is doing business with the agency.

Section 112.213(7) (a), Florida Statutes (2001), provides:

No public officer...of an agency shall have or hold any employment or contractual relationship with any business entity or any agency with is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee....nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

Section 112.313(1), Florida Statutes (2001), defines “public officer” to include any person elected or appointed to hold office include any agency. Section 112.313(2), Florida Statutes provides in pertinent part that

No public officer....shall solicit or accept anything of value to the recipient including a gift, loan...promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer.....would be influenced thereby.

The State of Florida Commission on Ethics has previously found the term “business entity” as defined in § 112.312(5), Florida Statutes to include corporations, including not-for profit enterprises. CEO 94-17; CEO 91-30; CEO 82-9.

The Commission on Ethics has also held that a business entity is “doing business” with an agency where the parties have entered into a lease, contract, or other type of legal arrangement under which one party would have a cause of action against the other in the event of a default or breach. CEO 90-10; CEO 92-40; CEO 88-24.

Thus for purposes of §112.313(7) (a), as a city commissioner, you are a “public officer”, the city commission is an “agency”, and any business entity that is “doing business” with the city would fall within the prohibitions of that section. As such, unless exempted, a city commissioner is prohibited from having or holding a contractual relationship with a “business entity” that is “doing business” with the city.

However, the Ethics Commission has held that §112.313(7) (a), Florida Statutes, does not prohibit a public officer from contracting with a business entity which is doing business with another

business entity, which in turn is doing business with or is regulated by the City. CEO 93-11. In an oft quoted opinion of the Ethics Commission, the Commission had occasion to consider whether a prohibited conflict of interest was created where the paving company of which a water management district board member was president and an owner subcontracted with a general contractor on a district project. The Ethics Commission opined that there was no prohibited conflict of interest under Florida Statutes § 112.313 (3) or 112.313 (7). CEO 88-43 (copy attached); see also, CEO 91-28, CEO 91-7, CEO 76-213, CEO 77-155 and CEO 78-43. However, the board member would be prohibited from voting on the selection of a contractor for the project if his company agrees to subcontract with a general contractor which has submitted a proposal for the project.

In CEO 91-7 the Ethics Commission opined that a public officer which was to subcontract with a company that submitted a bid on a School Board project was NOT required to abstain from voting on the acceptance or rejection of the project. The Ethics Commission reviewed Section 112.3143(3), Florida Statutes, which provides:

(a) No ...municipal ...officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall prior to the vote being taken publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining and voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting who shall incorporate the memorandum in the minutes.

The Ethics Commission has held that no "special" gain exists where the circumstances were such that any gain or loss to the public official was too remote or speculative. CEO 87-47.

Florida Statutes, Section 112.313(3) provides in relevant part

DOING BUSINESS WITH ONE'S AGENCY—Nopublic officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer.....is an officer, partner, director, or proprietor or in which such officer....has a material interest. Nor shall a public officeracting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's....own agency.

Thus, you are prohibited from directly or indirectly contracting with the City, unless such contracts occurred prior to your Qualification for elective office.

The term "indirectly" has been construed not to include goods or services provided by a subcontractor or wholesaler. See also, CEO 76-213, CEO 77-155, CEO 78-43, CEO 78-83 and CEO

Florida Statutes, Section 112.313 (6) provides in pertinent part

MISUSE OF PUBLIC POSITION—No public officer...shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself or others....

This provision would not prohibit the business relationships discussed thus far. However, the Ethics Commission has advised that a public officer “take pains to avoid even the appearance that his public position or information gained in his public capacity are being used for his private benefit.” CEO 91-7.

In CEO 92-46, the Ethics Commission held that there was no violation of Florida Statutes §§112.313(3) or 112.313(7) (a) where the engineering firm of a member of an agency provided services to a municipality receiving funding from his agency. The Commissioner’s firm would not be selling services to the agency, he would not have a contractual relationship with a business entity or agency subject to the regulation of or doing business with the agency, and no continuing or frequently recurring conflict or impediment to duty would be present. (copy attached).

In CEO 91-19, the Ethics Commission had occasion to consider whether a prohibited conflict of interest existed under §112.313(3), Florida Statutes, where a candidate for city commission was employed by a company which served as the local affiliate for a company which had contracted with the city to serve as the third party administrator for the city’s health insurance plan. The Ethics Commission held that there was no prohibited conflict of interest as the commissioner’s employer was providing the services to the contractor. However, the Commission found that the situation presented would result in a continuing or frequently recurring conflict between the official’s private interests and the performance of his public duties, and thus was prohibited under the second portion of §112.313 (7) (a), Florida Statutes.

In CEO 94-37, the Ethics Commission held that there was no prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, where clients of a commissioner’s incorporated insurance agency were to do business with the city, provided that the commissioner was not the insurance agent under whose license the clients’ insurance business was conducted. The insurance agency had a total of 33 employees, and the commissioner was the chief executive officer, a director and owned forty-eight percent of the stock of the corporation. The remainder of the stock is owned by family members. Furthermore, nearly 100 percent of the commissioner’s income was derived from the insurance agency.

The Ethics Commission considered the situation where clients of the corporation might want to do business with the city, such as contracts for goods and services which would, if they exceed a director’s budgetary approval, require agency approval, which contracts are awarded to the lowest and best bidder. The clients of the corporation would maintain insurance through the commissioner’s corporation regardless of whether or not the clients were awarded city business. The

Ethics Commission was asked to explain the distinction between this opinion and its converse holding in CEO 94-10 (attached), wherein the Ethics Commission found a prohibited conflict of interest under Section 112.313(7) (a), where the commissioner was the sole owner of an unincorporated insurance agency. The Ethics Commission reiterated their longstanding and frequently augmented precedent that a public officer “does not hold employment or a contractual relationship with a business entity due to the fact that he holds employment or a contractual relationship with a corporation (even a closely held corporation) that in turn holds a contractual relationship with that same business entity.” CEO 94-37-[citing CEO 94-21, CEO 93-13, CEO 92-27, CEO 91-42, CEO 91-28, CEO 88-43, CEO 81-47 and CEO 79-1 and all opinions referenced therein]. The Ethics Commission went on to explain the unique characteristics of the insurance agent and the fact that an individual insurance agent as well as a corporate insurance agency can have a contractual relationship with the insurance customer. The Ethics Commission recognized Florida case law which held that there existed a contractual relationship between a client and the particular agent under whose license the client’s business is handled, not between the client and every insurance agent connected with the insurance agency.

Thus, the Ethics Commission has clearly held that a corporation, of which a commissioner is the sole shareholder, may contract with a business entity which has or may enter into contractual relationships with the city. Whether the commissioner must abstain from voting on matters involving the business entity is determined on a case by case basis.

In conclusion, in determining whether a prohibited conflict of interest exists barring your company from entering into contractual relationships with companies that presently have, or in the future may have, contractual relationships with the City, one must first analyze Florida Statutes § 112.313 (3)[Doing Business with One’s Agency]; then, Florida Statutes § 112.313(7) [Conflicting Employment or Contractual Relationship] must be analyzed; then Florida Statutes § 112.313 (6) [Misuse of Public Position] and § 112.313 (8) [Disclosure or Use of Certain Information] would also be reviewed. Finally, there are several exemptions under the Ethics laws. However, whether it would be appropriate for you, as a commissioner, to abstain from voting on any matter involving the business entity with which your corporation has a contractual relationship, pursuant to Florida Statutes § 112.3143 [Voting Conflicts], must be determined on a case by case basis.

Emh
Attachments