



INQ 04-95

July 23, 2004

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VIA FAX (305) 854-5351

Eve Boutsis
Office of the Village Attorney
3225 Aviation Avenue, Third Floor
Miami, FL 33133

RE: REQUEST FOR INQUIRY

Dear Ms. Boutsis:

You requested an opinion regarding any potential conflicts of interest under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and the 'Lobbyists' provisions under the Village of Palmetto Bay Charter as they relate to Council Member Paul Neidhart's re-election campaign and the propriety of participating in a campaign fundraiser.

The Miami-Dade County Home Rule Charter provides the Commission on Ethics and Public Trust with the authority to review and interpret municipal lobbying rules and ordinances.

According to the facts outlined in your request, Mr. Scott Silver, the owner of the former Burger King World Headquarters property, now called the Palmetto Bay Village Center ["Village Center"], would like to host a re-election campaign fundraiser for Council Member Neidhart. The fundraiser will be held at the Village Center, located at SW 184 ST and Old Cutler Road.

Within the next couple of years, Mr. Silver may appear before the Village Council in order to obtain a zoning variance related to deed restrictions that encumber the Village Center. Although Mr. Silver has been in contact with Village staff regarding development proposals, no definitive zoning request has been made.

Specifically, Mr. Neidhart is concerned that if Mr. Silver hosts the fundraiser, Mr. Silver would be prohibited from

lobbying the Village Council and seeking its authorization on a zoning application with regard to the Village Center for a period of four (4) years.

Section 7.6, "Lobbyists" of the Village Charter states in part,

(A) No person or firm who directly or through a member of the person's immediate family or through a political action committee or through any person who makes a contribution to a candidate who is elected Mayor, Vice-Mayor or Council Member, shall be permitted to lobby on behalf of another, any elected official, employee or appointed board or committee member for a period of four (4) years following the swearing in of the subject elected official.

The 'lobbyists' provision of the Village Charter would not prohibit Mr. Silver from hosting the fundraiser and thereafter appearing before or lobbying the Village Council with regard to the Village Center. The language in Section 7.6 prohibits persons or firms from lobbying on behalf of third parties. Since Mr. Silver is the owner/developer of the property, he would be representing himself with regard to his property, not representing a third party; therefore, he would not be prohibited from lobbying in accordance with Section 7.6.

In addition, should Mr. Neidhart be re-elected, the Code of Ethics, which is applicable to the municipalities, would not prohibit him from participating in and voting on Mr. Silver's future zoning application. 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.

Absent any facts or circumstances that indicate that Mr. Neidhart has established one of the above-mentioned enumerated relationships with Mr. Silver and/or the Village Center, or that he would benefit from the zoning application in a manner distinct from the manner in which it would affect the public generally, there would be no voting conflict for Mr. Neidhart. However, there may be an appearance of impropriety and he would have to determine whether he could be impartial in deciding the zoning application.

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 do not hesitate to call Robert Meyers or the undersigned at (305) 579-2594.

Sincerely Yours,



Christina Prkic
Staff Attorney



To: Cristina Prkic
Comm'n Ethics and Public Trust

Date: July 20, 2004

From: Eve A. Boutsis,
Office of village attorney

Re: Advisory Opinion Request

REQUEST:

Council member Neidhart is seeking an opinion regarding the propriety for him to accept the offer to throw the council member a campaign re-election fund raiser by Mr. Scott Silver, the owner of the former Burger King World Headquarters property, now called: Palmetto Bay Village Center, located at SW 184th Street and Old Cutler Road. The fund raiser will be held at the Palmetto Bay Village Center on July 28th, 2004.

BACKGROUND AND ANALYSIS:

As you are aware, we previously contacted you for an informal opinion on this item. In an abundance of caution we are now seeking a written advisory opinion.

Mr. Silver, owns the Palmetto Bay Village Center, located at SW 184th Street and Old Cutler Road, Village of Palmetto Bay. Within the next couple of years Mr. Silver may be appearing before the village council in order to obtain zoning variances related to deed restriction that encumber the Village Center. Mr. Silver has been in contact with village staff regarding development proposals for the property. To date, no definitive zoning requests have been made. Part of Mr. Neidhart's concern involves the village charter's "Lobbyist" provision.

Section 7.6, of the village charter entitled "Lobbyists" states in pertinent part:

- (A) No person or firm who directly or through a member of the person's

immediate family or through a political action committee or through any other person makes a contribution to a candidate who is elected Mayor, Vice-Mayor or Council member, shall be permitted to lobby on behalf of another, any elected official, employee or appointed board or committee member for a period of four (4) years following the swearing in of the subject elected official.

The concern is that if Mr. Silver were to throw a fund raiser for Mr. Neidhart, would he be prohibited from lobbying the council for four years. During our discussions last week, you indicated that neither you, nor Mr. Robert Meyers, who participated in the village's incorporation perceived that Mr. Silver would be prohibited from seeking council authorization on a zoning application were he to sponsor the fund raiser.

In addition to contacting you, I have reviewed section 2-11.1, and 12-5, of the county code, as well as chapter 106, Fla. Stat., which chapter governs campaign expenditures. I have not found any code provision or statutory authority that would prohibit Mr. Silver from sponsoring the fund raiser to re-elect council member Neidhart. Additionally, were he to appear before the council, on his own behalf, as owner and developer of the Village Center, the language of the village charter does not appear to prohibit Mr. Silver from going before the council on any zoning applications he may have in the future. The wording of section 7.6 of the village charter addresses lobbying on a third person's request. Mr. Silver would be appearing on his, or his corporation's behalf, and not behalf of another.

Should Mr. Neidhart be re-elected, he would individually have to determine whether he can be impartial in deciding upon an zoning application that came before him. There does not appear to be a lobbying prohibition that would prevent Mr. Neidhart from voting on any quasi-judicial application presented by Mr. Silver. We ask, as Mr. Robert Meyers was involved with the village's incorporation process that the Commission on Ethics provide us with an advisory opinion either confirming or denying our understanding of the elections code and section 7.6, of the village charter.

RECOMMENDATION:

We ask that the Commission on Ethics issue the advisory opinion as soon as possible as the proposed fund raiser is to take place on July 28th, 2004.