

MIAMI-DADE COUNTY COMMISSION ON ETHICS
AND PUBLIC TRUST

Advisory Opinion No. RQO-98M2
June 10, 1998

Subject: Prohibited business transactions

Summary:

The husband of a county employee is prohibited from entering into a contract or transacting business with the county through a corporation in which he had a controlling financial interest at the time the company submitted a bid for a contract even though he divested his controlling interest before the county commission selected a bid..

Question:

Is a husband of a county employee prohibited from transacting business with the county through a corporation? Is the corporation transacting business with the county when it submits a bid?

Facts:

An advisory opinion was requested by a county employee. Her husband is a shareholder of a corporation that submitted a bid for a county contract. At the time of submitting the bid, the husband owned 40% of the shares of the corporation. The husband recognized that, as the owner of 10% or more of the shares of the corporation, he held a "controlling financial interest," as that term is defined by § 2-11.1(b)(8) of the Code of Miami-Dade County, and he is prohibited from entering into a contract or transacting business with the county. Subsequent to submitting the bid, and before any action by the county commission to accept a bid, the husband reduced his shareholdings to 9%, or less than a controlling financial interest in the business. The husband, through his wife, contends that he is not prohibited from entering into a contract with the county, if the county commission accepts the bid of the corporation, because he was not "transacting business" at the time the bid was submitted.

Analysis:

The Commission on Ethics and Public Trust determined that transacting business includes the event of submitting a bid, since a bid is a legally binding offer by the corporation, and the husband may not avoid the prohibition on entering into a contract by divesting his controlling interest in the corporation prior to acceptance of a bid.

ORDERED by the Miami-Dade County Commission on Ethics and Public Trust in public session on Wednesday, June 24, 1998.

MIAMI-DADE COUNTY COMMISSION
OF ETHICS AND PUBLIC TRUST

BY 
MICHAEL H. SALMON
Chairperson