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VIA FACSIMILE (305) 375-4605

August 1, 2000

Judy Seidner
Chief
Office of Support Services
Miami-Dade Transit Agency
111 N.W. First Street
Suite 910
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION RQO 00-119

Dear Ms. Seidner:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 25, 2000 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the Cone of Silence when a formal bid protest is filed after the County Manager makes his or her official award recommendation.

The Commission found that the Cone of Silence applies during a formal bid protest only if the Manager withdraws his written recommendation to the board. Section 2-11.1(t)(1)(b)(i) of the Conflict of Interest and Code of Ethics ordinance provides that "The Cone of Silence shall terminate at the time the Manager makes his or her formal recommendation to the County Commission provided however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the

Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation."

Section 2-8.4 (b) provides that "(p)rotests shall be filed with the Clerk of the Board and mailed to all participants in the competitive process and to the County Attorney within ten days of the filing of the Manager's recommendation.

Generally, the County Manager makes his recommendation to the County Commission by filing the recommendation with the Clerk of the Board of County Commissioners and placing the recommendation on the agenda for a County Commission meeting. The Clerk distributes the recommendation to bidders on the matter in accordance with the bid protest section of the code. Bidders have ten days to file a bid protest after the filing of the Manager's recommendation.

If a protest is filed, the Manager defers any further action on the matter until the hearing examiner makes his or her recommendation.

Pursuant to the provisions of the ordinance, at the time the memo is formally filed with the Clerk of the Board and presented as an agenda item to the Board of County Commissioners, the Cone of Silence is lifted. The Cone of Silence may only reapply if the Manager withdraws his formal recommendation or the Commission sends the matter back to the Manager or staff for further action. Therefore, the Cone would remain lifted after a bid protest is filed unless the Manager officially withdraws his formal recommendation which has been presented to the Board.

Therefore, the Cone of Silence is lifted during a bid protest unless the Manager withdraws his or her formal recommendation or

the County Commission refers the matter back to the Board for formal approval.

This opinion construes the Miami-Dade 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 if you have any questions regarding possible conflicts under state law.

If you have any questions regarding the opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 579-2653.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director