

advisor and underwriter on aviation bond transactions. Among the solutions proposed by the Finance Department, the second solution, which precludes Jackson Securities from participating in aviation bond work, is the best alternative. The first solution, which requires Jackson to withdraw from the pool altogether, creates a vacancy in the underwriting pool and is broader than necessary to cure the conflict. The third and fourth solutions do not cure the conflict created by the acquisition. Under both scenarios, FSC still retains a financial interest in any decisions that impact the underwriting pool.

Therefore, First Southwest may not serve as financial advisor to the airport if Jackson Securities participates in aviation bond issues as a Division I co-manager. First Southwest will have a conflict of interest because the acquisition may impact its independent judgment in official decision-making and its financial interests will be directly affected by its official actions. However, the conflict may be cured by Jackson Securities withdrawing from any aviation related bond work.

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 this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,



ROBERT MEYERS
Executive Director

company's role as financial advisor to the airport and Jackson Securities role as an underwriter. Although not barred by the Conflict of Interest and Code of Ethics ordinance, the arrangement raises several potential conflicts. The language in the RFP is recognition of the potential conflict created by this relationship.

As financial advisor to the airport on bond issues, FSC will have involvement on many issues that will impact underwriters including the components of the underwriters spread. By acquiring a financial interest in an underwriting firm, the firm will be directly affected by official actions that involve Jackson Securities. The direct financial impact may impair the company's independence of judgment in making decisions regarding the bonds including pricing and the portion of the sale given to Jackson as a co-manager.

The Finance Department has proposed several solutions to resolve any conflict of interest. The proposed solutions are: 1)

require Jackson Securities Inc to resign from the Division I pool and to issue a letter where they will refrain from seeking any Aviation related work; 2) require Jackson Securities Inc. to issue a letter whereby they agree not to be rotated onto any Aviation bond transaction and to refrain from seeking any Aviation related work; 3) require Jackson Securities to issue a letter whereby they agree not to participate in any Aviation related work other than participating as a Co-Manager on Aviation bond transactions as a member of the Division I Underwriting Pool

and 4) require FSC and Jackson Securities to change their relationship to creditor-debtor without FSC having either an equity interest or having any representation on the board of Jackson Securities.

FSC and Jackson Securities may not concurrently serve as aviation financial

investment needs at acceptable costs; providing expertise in the technical aspects of designing financing arrangements and instruments; and representing the county's interest in financial market dealings and other financial matters. The Aviation segment is specifically targeted to advice regarding to the issuance of notes and bonds related to financing of the capital improvement program. The financial advisor is also responsible for advising the county on the means of conducting the sale of bonds by recommending competitive bidding, negotiation or some other process. The advisor also participates in the pricing call and advises the county as to the reasonableness of the components of the underwriters spread.

Jackson Securities is a member of the Division I Underwriting Pool. The Division 1 pool, which was established in 2000 for a five-year term, consists of minority-owned and small business enterprise firms. The firms serve as co-managers on bond issues. The co-manager receives a share of the bonds issued by the county to sell on the market. The pricing of the bonds and the company's margin on the bonds is determined by the senior manager in conjunction with the Manager's Finance Committee (MFC). The MFC also determines what underwriting firms are assigned as co-managers to a particular transaction.

The RFP for Financial Advisory Services provides that a Financial Advisory firm may not serve on a joint venture with a firm that provides underwriting services to the county. Every financial advisory firm is required to have a joint venture partner that is a minority or small business firm. First Fidelity is FSC's joint venture partner on the Aviation proposal.

The Commission found that FSC's acquisition of a minority interest in Jackson Securities creates a conflict of interest between the



October 15, 2001

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RE: REQUEST FOR ADVISORY OPINION 01-91

Dear Ms. Baum:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 11, 2001 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts created by a county financial advisory firm acquiring a minority interest in an underwriting firm that does work for the county.

In your letter, you advised the Commission that on July 9, 2001, First Southwest Company (FSC), Aviation Financial Advisor, acquired a 20% minority interest in Jackson Securities. Jackson Securities is a Division 1 underwriting firm in the county. Under the terms of the agreement between the companies, FSC will acquire two places on the Jackson Securities Board. FSC will also provide clearing services to Jackson Securities.

FSC is currently a proposer to continue as the Aviation Financial Advisor. On April 4, 2001, the County advertised for a Financial Advisor to handle aviation issues. The financial advisory firm assists the county by evaluating financing options; developing financial strategies to meet capital