

Memo

To: Mercedes Sosa
Director
GSA/ Construction Management and Renovation Services Division

From: Ardyth Walker
Staff General Counsel

Date: August 8, 2001

Re: Inquiry 01-29

I received your request for an opinion regarding the award of a GSA contract to the spouse of a county employee. In your memorandum, you wrote that Divine Painting has been awarded a painting contract to do work at the Stephen P. Clark Center. Denise Crosby, a fifty percent owner of the business, is a credit representative for the Public Health Trust. At the time of the award, you were unaware that Mrs. Crosby was a county employee. The Executive Director and I reviewed this matter and determined that the code permits Divine Painting to contract with the county. However, the current contract is voidable because the company failed to request an ethics opinion prior to award of the contract.

Section 2-11.1 (c) permits county employees to contract with the County unless the employee's department is involved in any aspect of the contract. Section 2-11.1 (c) provides that " Notwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee.... from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, 2) the employee has not participated in determining the subject contract awards or awarding the contract , and 3) the employee's job responsibilities and job description

will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance. Since Crosby's job responsibilities with the Public Health Trust do not require her involvement in any aspect of the contract, the code permits Divine Painting to contract with the county.

However, Section 2-11.1(c) requires any employee or immediate family member to obtain an opinion from the Ethics Commission prior to submittal of a bid, response or application of any type to contract with the County by his employee or his or her immediate family. Failure to comply with the provisions of this section makes the contract avoidable. Since Divine Painting did not seek an Ethics Commission opinion prior to award of the contract, the contract is voidable under the ordinance.

Therefore, Divine Painting may contract with the county but the current contract is voidable for failure to seek an Ethics Commission opinion.

The Ethics Commission has not considered this matter. If you would like a formal Ethics Commission opinion, please contact the undersigned and the matter will be scheduled for the next Commission agenda.

If you have any questions or I can provide any additional assistance, please contact the undersigned at 350-0616.