



January 10, 2002

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Jacqueline Menendez
Assistant Director
Miami-Dade Fire Rescue Department
9380 N.W. 41st Street
Miami, FL 33178

RE: REQUEST FOR ADVISORY OPINION 02-02

Dear Ms. Menendez:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 9, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any possible conflicts created by the Fire Board approving payment to a Fire Board member for Recovery services.

In your request, you advised the Commission that Roberto DelCristo, M.D. is a member of the Urban Search and Recovery Team and a member of the Fire Board. Delcristo has served as a member of the Urban Search and Recovery Team since 1993 and was elected to the Fire Board in 1999. As a member of the Search and Recovery Team, Dr. Delcristo recently provided services in New York City during the World Trade Center emergency. The Urban Search and Recovery Team members are federalized when they provide services during an emergency and the members are paid by Federal Emergency Management Agency funds. The federal funds are paid to the County. The Board of County Commissioners and the Fire Board must authorize payment to non-employee team members. The Fire Department is concerned that Section 2-11.1(u) (prohibited business transactions) prohibits payment to DelCristo.

The Commission found that the Conflict of Interest and Code of Ethics ordinance permits the Fire Board to authorize payment to Delcristo for the Recovery services but he may not vote on the issue.

Section 18-28 (g) makes the provisions of the Conflict of Interest and Code of Ethics ordinance applicable to Fire Board members.

Section 2-11.1(u) does not prohibit Delcristo from voting on the matter because it concerns arms-length transaction between covered personnel and persons or entities that have county contracts. Section 2-11.1(u) states that " No person who is serving as an elected County official or a member of the staff of an elected County official, or as a County Manager, senior assistant to the County Manager or department director shall enter into a business transaction with any person or entity that has a contract with Miami-Dade County or any shareholder, partner, officer, director or employee of said contractor unless said business transaction is an arms-length transaction in the ordinary course of business." Since the contract in question is not between Delcristo and FEMA, Section 2-11.1(u) does not prohibit Delcristo from receiving payment for his services.

Moreover, Section 2-11.1(o) also permits Delcristo to receive payment from the Fire Department. Section 2-11.1 (o) prohibits a person covered by the ordinance from acquiring a financial interest in a project, business entity or property at a time when he believes or has reason to believe that the said financial interest will be directly affected by the County or county agency of which he is an official, officer or employee. Since Delcristo's membership on the Urban Search and Recovery Team predates his service on the Fire Board, the provisions of 2-11.1(o) do not apply.

Finally, Section 2-11.1 (d) prohibits fire board members from voting or participating in any way in any matter presented to the fire Board 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 fire Board: (1) officer, director, partner, of counsel, consultant, employee fiduciary or beneficiary or (ii) stockholder, bondholder, debtor or creditor, 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. Since Delcristo will be uniquely affected by the action of the fire Board, he may not vote on the payment resolution.

Therefore, the Conflict of Interest and Code of Ethics ordinance permits the fire Board to authorize payment to Delcristo for his service on the Urban Search and Recovery Team. However, Delcristo may not vote on the payment resolution.

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

Sincerely Yours,

ROBERT MEYERS
Executive Director