

April 18, 2002

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Chair
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RE: REQUEST FOR ADVISORY OPINION 02-43

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 17, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the Conflict of Interest and Code of Ethics ordinance to the activities of the HIV/AIDS Partnership. Specifically, the Partnership wants to know whether members who are service providers can vote on allocations for service categories under which they receive funding and whether a person employed by a provider can chair a committee that makes funding recommendations that will affect their employer.

In your letter, you advised the Commission that the Miami-Dade HIV Partnership was established pursuant to the Ryan White Act to provide comprehensive planning for treatment and services to persons with HIV and AIDS. The Partnership was recently reconstituted and includes thirty-nine members including service providers and members of the affected community. The Partnership serves in an advisory capacity to the Mayor and the Board of County Commissioners.

The Partnership is required to develop a plan for providing services to the affected community and establish service priorities for distribution of federal funds under the Ryan White Act and other state and federal programs.

The Ryan White Act contains a Conflict of Interest provision that governs members of the Partnership. 42 U.S.C. § 300ff-12 (5) (B) (2001) provides that "an individual may serve on the planning council under paragraph (1) only if the individual agrees that if the individual has a financial interest in an entity, if the individual is an employee of a public or private entity, or if the individual is a member of a public or private organization, and such entity or organization is seeking amounts from a grant under section 300ff-11(a) of this title, the individual will not with

respect to the purpose for which the entity seeks such amounts participate (directly or in an advisory capacity) in the process of selecting entities to receive such amounts for such purpose. "

Pursuant to Section 2-1104 of the Code of Miami-Dade County, the Partnership is exempt from Section 2-11.1 (c) and (d) of the Conflict of Interest and Code of Ethics ordinance. Members of the Partnership are governed by all other sections of the Conflict of Interest and Code of Ethics ordinance.

The Partnership's internal policies prohibit members from " knowingly taking action or making statements intended to influence the conduct of the Partnership in such a way as to confer any financial benefit on the member or alternate, family members or on any organization in which he or she is an employee or has a significant financial interest." The Partnership's internal rules also prohibit a member from voting on allocations at the committee level if their employer receives funding through the program but they vote on the total funding package at the Partnership level.

The Commission found that the Miami-Dade County Conflict of Interest and Code of Ethics ordinance permit a partnership member employed by a provider receiving funds from one of the Partnership's programs to chair a committee but the member may not vote on funding recommendations that directly benefit the member's employer or an entity in which they have a financial interest at either the committee level or the Partnership level.

Section 2-11.1(v) provides that no advisory board member "shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor."

Pursuant to Section 2-11.1(v), Partnership members may not vote on funding or other matters that directly affect their employer. Partnership members may vote on funding recommendations that affect a specific category of service that includes themselves or their agency, but as under federal law, they may not vote on any funding recommendation that will specifically and directly benefit their agency.¹

¹ Partnership members in specific service categories are prohibited from voting for funds in their specific service category if there are fewer than three (3) service providers in that category.

The Conflict of Interest and Code of Ethics ordinance does not prohibit Partnership members from chairing committees that debate funding allocations. Partnership members may chair committees that debate allocations to services funded under that program but they may not vote on funding recommendations that directly benefit the member's employer or an entity in which they have a financial interest at the committee level or the Partnership level.