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October 23, 2003

Commissioner Jimmy L. Morales
Stearns Weaver, et.al
150 West Flagler Street
Miami, FL 33130

RE: REQUEST FOR ADVISORY OPINION 03-169

Dear Commissioner Morales:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 22, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the Election Campaign Financing Trust Fund ordinance authorizes a candidate who is seeking public funding to raise funds in excess of three hundred thousand dollars once the expenditure cap has been lifted.

In your letter, you advised the Commission that you are a declared candidate for Mayor of Miami-Dade County and plan to seek public financing. Section 12-22(e)(1) provides that any candidate for Mayor or for the Board of County Commissioners who requests contributions from the Election Campaign Financing Trust Fund shall limit his or her total expenditures during the initial election as follows: a) Mayor: Six hundred thousand dollars; b) Board of County Commissioners: One hundred and fifty thousand dollars. In order not to exceed the expenditure cap of six hundred thousand dollars, you have limited your private contributions to three hundred thousand

dollars.¹ The Election Campaign Financing Trust Fund will provide three hundred thousand dollars to eligible mayoral candidates who seek public financing. At the present time, one of the announced mayoral candidates has received campaign contributions in excess of five hundred thousand dollars. The statutory scheme provides that once one candidate receives contributions or makes expenditures that exceed one hundred percent of the expenditure limit, the expenditure cap is lifted.

The Commission found that you may raise contributions in excess of three hundred thousand dollars and still receive public financing once another candidate has raised contributions in excess of six hundred thousand dollars. Section 12-22 (j) provides that expenditure caps are lifted once another candidate receives contributions in excess of the expenditure cap. Section 2-11.1(j) provides that "Whenever a candidate for Mayor or for the Board of County Commissioners who has elected to participate or not to participate in election campaign financing under the provisions of this section receives contributions or makes expenditures that exceed one hundred percent of the applicable expenditure limit provided in subsection (e) all opposing candidates are notwithstanding the provisions of subsections (c), (d), (e) or (g) or any other provision requiring adherence to such limit released from such expenditure limit." Since the ordinance provides that the release of the expenditure limit modifies the eligibility requirements in section 12-22 (c) and the expenditure requirements contained in 12-22 (e) which establish an expenditure limit of six hundred dollars, a candidate may solicit, receive and expend more than six hundred thousand dollars once the expenditure cap is lifted because he

¹ Section 12-22 (c) provides that in order to be eligible for public financing , a mayoral candidate shall have received at least one thousand contributions between fifteen dollars and two hundred and fifty dollars from one thousand registered voters residing in Miami-Dade County.

or she may spend funds in excess of six hundred thousand dollars. Therefore, you may raise contributions in excess of three hundred thousand dollars once the expenditure cap is lifted.

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,

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

ROBERT MEYERS
Executive Director

cc: Gerald Sanchez, Assistant County Attorney