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January 22, 2004

Amber Riviere
Office of Strategic Business Management
111 NW 1st Street, 12th Floor
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION 03-190

Dear Ms. Riviere:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 21, 2004 and rendered its opinion based on the facts stated in your request.

You requested an opinion asking whether it is a conflict of interest for a member of the Miami-Dade County Boundaries Commission ["Boundaries"] to serve on a Municipal Advisory Committee ["MAC"].

You advised the Ethics Commission that the Boundaries Commission is a permanent County advisory board whose primary function is to evaluate petitions for incorporation and annexation applications. They make recommendations to the Planning Advisory Board and the Board of County Commissioners ["BCC"] on municipal boundary changes and on incorporation.

A MAC is a committee appointed and created by resolution by BCC to assess the fiscal feasibility and desirability of incorporating a particular area. A MAC, in contrast to the Boundaries Commission, studies the issues surrounding incorporation for a specific geographic boundary and accordingly, advises the BCC on the possible creation of a municipality.

The Ethics Commission determined that under the Conflict of Interest and Code of Ethics Ordinance there is no legal

prohibition for members of the Boundaries Commission from serving on a MAC; however, members serving on both entities would be subject to certain restrictions. Even though a MAC is not considered an official County Board, nevertheless, it is a committee created for the purpose of studying the possible incorporation of a specific geographic boundary.¹ Members of the Boundaries Commission and a MAC are subject to certain legal prohibitions delineated in the Code of Ethics. Section 2-11.1 (v) "*Voting Conflicts: Members of Advisory and Quasi-Judicial Boards,*" states:

No person included in the terms defined in subsections (b) (3) (quasi-judicial personnel) and (b) (4) (advisory personnel) 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.

Accordingly, a Boundaries member could not vote on a matter if he or she would be directly affected by the board action and if he or she has any of the enumerated relationships with the person or entity appearing before the board.

Furthermore, a Boundaries member could not appear before the Boundaries Commission on behalf of a MAC. Section 2-11.1 (m)(2) "*Certain appearances and payment prohibited,*" states:

No person included in the terms defined in subsections (b)(2), (3) and (4) [autonomous personnel, quasi-judicial personnel, and advisory personnel] shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor

¹ Miami-Dade County Code, Sec. 2-11.37. "*Creation of new boards.*" All County Boards shall be created only by ordinance. In the instance when a MAC, after a year in existence, is reestablished by ordinance, it then becomes an official County board. Individuals are prohibited from serving on more than one County board simultaneously. [See, Sec. 2-11.38. "*Membership on boards.*"]

shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party. In addition to these legal prohibitions, there are additional limitations since both entities similarly review matters pertaining to incorporation and make recommendations to the BCC.

In order to avoid perceived conflicts of interest or appearances of impropriety, a member of the Boundaries Commission should not serve as a Chair of a MAC. Moreover, when matters pertaining to a MAC appear before the Boundaries Commission, Boundaries members should recuse themselves if they serve on that respective MAC. Also, in an abundance of caution, said Boundaries members should recuse themselves if the matter involves a MAC that neighbors the MAC on which they serve. [See, INQ 03-108, which notes that issues regarding one MAC may impact a neighboring MAC.]

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

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