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June 16, 2003

Elva Marin
Real Estate Manager
General Services Administration
111 N.W. First Avenue
Suite 2460
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION 03-86

Dear Ms. Marin:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 12, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding county employees' ability to bid on surplus property and infill housing that is sold via sealed bid.

Miami-Dade County operates an infill housing program to spur development of affordable housing in the inner city. The Infill Housing Program takes vacant, abandoned and dilapidated lots and sells or transfers the property to community development corporations, non-profit corporations or qualified private developers. The county also provides additional construction financing and other assistance to infill housing developers.

The Infill Housing Program sells some of the lots through sealed bids. The prospective bidder must fill out a disclosure form and execute required affidavits. The lots are sold to the highest bidder. An oversight committee consisting of the departments of Housing, GSA, Team Metro, DERM, Planning and Zoning, Building, Water and Sewer, OCED, Public Works and the Tax Collector's Office manages the program. The departments on the oversight committee play a critical role in site selection, evaluation of structural and other potential hazards, waiver of liens to facilitate development and other necessary components for building and development.

The county also sells surplus county property through sealed bids. The property is also sold to the highest bidder.

The Commission found that the Conflict of Interest and Code of Ethics ordinance permits most county employees to bid on Infill Housing property. However, employees of departments who serve on the Infill Housing Steering Committee may not bid on Infill Housing property. Section 2-11.1 (c) provides that "no person shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or a member of his immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and any such contract, engagement or business engagement entered into in violation of this subsection shall render the transaction voidable. Immediate family is defined under the ordinance as spouse, parents and children. A controlling financial interest is defined as ten percent or more of the stock in the corporation.

The ordinance permits employees to transact business with the county unless the employee works for a department that has any

responsibility for the oversight, management or administration of the program. 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. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

Accordingly, all county employees, except employees that work for departments on the Infill Housing Oversight Committee, may bid on infill housing property.

As to your first question, pursuant to Section 2-11.1(c), all employees may purchase surplus personal property. Moreover, all employees, except GSA employees, may purchase surplus motor vehicles. Section 2-11.1 (c) provides that " nothing herein shall prohibit or make illegal (1) the payment of taxes, special assessments or fees for services provided by county government; (2) the

provided by county government; (2) the purchase of bonds, anticipation notes or other securities that may be issued by the county through underwriters or directly from time to time; (3) the participation of the persons included in the terms defined in subsection (b)(1) through (b)(6) except for employees of the general services administration and their immediate family as defined in (b)(9), in the public auction process utilized by the county for the disposal of surplus motor vehicles; (4) the purchase of surplus personal property, pursuant to administrative order, by person defined in subsection (b)(1) through (b)(9); 5) an application for direct assistance from the Miami-Dade County Department of Housing and Urban Development or an application to participate in a special housing program administered by the Department of Special Housing who participates in the administration of said programs; or 6) an application to participate in a single-family mortgage loan program sponsored by the Housing Finance Authority of Miami-Dade County has been submitted by a county person as defined in subsection (b) and would but for this section be eligible for participation in said program; provided, however, that the exception provided in this paragraph shall not extend to an employee of the Miami-Dade County Finance Department who participates in the administration of said single-family mortgage loan program. Therefore, all employees may purchase surplus personal property and all employees, except GSA employees, may purchase surplus motor vehicles.

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 cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director