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May 18, 2004

Eve Boutsis
Office of the Village Attorney
3225 Aviation Avenue, Third Floor
Miami, FL 33133

RE: REQUEST FOR ADVISORY OPINION 04-89

Dear Ms. Boutsis:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on May, 17, 2004 and rendered its opinion based on the facts stated in your request.

You requested an advisory opinion seeking an interpretation of the voting conflicts and the special financial interests provisions under the Code of Ethics as they relate to a Village Council member's property interests and his participation in voting on possible zoning changes.

According to your letter, the Village is conducting a charrette of an area within the Village district known as the Frango Triangle ["Triangle"]. Village Council member John Breder owns two properties within the Triangle, which is under rezoning consideration. One of the properties is a single-family home rental property; the second property is a shopping mall with twenty (20) storefronts. This property is jointly owned with Mr. Breder's father and brother.

Depending upon the results of the charrette, the Village will be making zoning changes to the area. As stated in the request, Mr. Breder has no plans to sell or to knock down his shopping center or the single-family home. Moreover, should the Village Council proceed with the rezoning of the Triangle, Mr. Breder's specific properties will not be coming before the Village Council for a zoning action;

rather, the vote will be a "yes/no" for zoning changes of the entire area.

The Code of Ethics Ordinance does not prohibit Mr. Breder from participating in and voting on the possible rezoning action of the Triangle. Section 2-11.1 (d) provides,

Additionally, no person included in the term defined in subsection (b) (1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners 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 Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary... or 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.

Mr. Breder's combined property interest in the Triangle area is approximately 93,000 sq. ft. of approximately 14,418,360 sq. ft. With specific regard to commercial property, approximately 50% of that area is zoned for commercial property use. His entire ownership interest within the area is rather negligible compared to the entire area under consideration for rezoning. Further, since the Village Council will be voting either "yes/no" on the rezoning change for the Triangle, and not voting on specific areas or properties within the Triangle, it does not appear that Mr. Breder will benefit in any distinct manner from which the general public would benefit. Therefore, no voting conflict of interest exists for Mr. Breder with regard to this matter.

In a previous opinion pertaining to officials voting on zoning matters, the Ethics Commission opined that a City Commissioner could vote on a zoning change for a local private school, which his children attend, since the Commissioner would not be uniquely affected by the Board action. [See, ROO 01-61]. [See also INQs 01-48; 02-17, which concluded that no voting conflicts exists when the percentage of property ownership is minor compared to the overall region under consideration.] In another related inquiry, INQ 02-28 determined that a City official could vote on a program which would similarly benefit the

Commissioner as well as other city residents, since the Commissioner would not benefit in any distinct or special manner.

In addition, Section 2-11.1 (n), "*Actions prohibited when financial interests involved,*" provides in part,

No person included in the terms defined in subsections (b)(1) through (6) shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest

Although the Code of Ethics does not define "special financial interest," it generally means a financial benefit or detriment that is experienced by a small class of persons. In the instant request, the possible rezoning changes that may be proposed as a result of the charrette would affect a large area, of which Mr. Breder owns a small percentage of property. Accordingly, a large class of persons who are similarly situated would share either the financial benefit or detriment relating to the rezoning matter. Therefore, Mr. Breder does not have a special financial interest which would prohibit him from voting on the rezoning matter.

However, should his specific properties, for example, matters pertaining to commercial zoning, come before the Village Council, he may have a potential voting conflict; therefore, he should seek an opinion from the Ethics Commission for further determination.

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,



ROBERT MEYERS
Executive Director