

September 23, 2005

Scott Mendelsberg
Acting Chief Financial Officer
Miami-Dade Fire Rescue Department
9300 N.W. 41rst Street
Miami, FL 33178

RE: REQUEST FOR ADVISORY OPINION 05-102

Dear Mr. Mendelsberg:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 22, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding conflicts of interest created by drafting a contract between Miami Dade County and the International Association of Fire Fighters (IAFF) Local 1403.

In your letter, you informed the Commission that in 1999, IAFF Local 1403 ("Union") opened a Wellness Center in the Firefighters' Memorial Buidling. The union contracted with a for-profit service provider for medical evaluation and rehabilitation services. Subsequently, the union created a non-profit-corporation, Firefighters Wellness Inc., and the contract with the service provider was terminated. Currently, the Union governs the center and the Department of Fire Rescue assists with day-to-day management of the center and program oversight by providing a fulltime Fitness Coordinator.

Since 2003, the Union has contracted with the University of Miami to operate the Wellness Center. Miami-Dade County has contracted with the Union to provide bi-annual physicals and other services to all Miami-Dade County firefighters. The Wellness Center also provides physical therapy and rehabilitation services for job-related injuries. Additionally, other county employees may use the Wellness Center for job-related injuries. The estimated cost for operating the Wellness Center in the current fiscal year is 1.272 million. Revenue is generated through subsidies provided through the collective bargaining agreement, reimbursement for physicals, worker's compensation and other insurance payments and subsidies from the Fire Rescue District.

In order to promote the long-term financial stability of the Wellness Center, the Union would like to create a joint management structure between the Union, Fire Department officials and other county officials. A new Board of Directors would be created that includes department directors from the Miami-Dade Department of Fire Rescue, Risk Management, Office of Strategic Budget Management, Miami-Dade Fire Rescue's Medical Director, Local 1403 President and a representative of UM Medical School.

The Commission found the Conflict of Interest and Code of Ethics ordinance permits fire department employees to create agreements on behalf of the county and union in their capacity as fire department employees. Section 2-11.1(j) (exploitation of official position) and Section 2-11.1(n) (Actions prohibited when financial interests involved) only prohibit employees from using their position to secure special benefits for themselves or others or financially benefiting from their public decisions.

In the instant case, although the employee will be representing both sides in creating a

draft joint governance agreement, representatives from both entities will have to approve the final agreement. Moreover, assuming a joint governance structure is approved, both sides will be represented in decision-making so an employee will not wear both hats in making decisions regarding the Wellness Center. Further, although the Union may benefit financially from a change in structure, no member will benefit in a unique financial manner since no individual member owns stock in either the Union or the current corporation formed to operate the Wellness Center.

The only caveat is that the employee may not use confidential information acquired as a result of his county employment to benefit the Union in its negotiations regarding the governance structure or other decisions regarding the center. Section 2-11.1(h) provides that no employee "shall accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him to disclose confidential information acquired by him by reason of his or her official position", nor shall he in fact ever disclose confidential information garnered or gained through his official position with the County, nor shall he ever use such information, directly or indirectly for his personal gain or benefit." Accordingly an employee may not use confidential information in the negotiations between the County and the Union regarding the Wellness Center.

Therefore, a Union member may draft and create agreements related to joint governance of the Wellness Center as long as the employee does not use confidential information acquired as a result of his County employment in drafting the document.

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,

ROBERT MEYERS
Executive Director