



ETHICS COMMISSIONERS

Kerry E. Rosenthal, CHAIRPERSON
Gail A. Dotson, VICE CHAIRPERSON
Seymour Gelber
Dawn E. Addy
Brenda Rivera

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

September 23, 2005

Theodore Berman
7970 Biscayne Point Circle
Miami Beach, FL 33141

RE: REQUEST FOR ADVISORY OPINION 05-106

Dear Mr. Berman:

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 your ability to vote on a conditional use permit request by the Carrfour Group. Your daughter is Vice-President of Services and Property Management.

In your letter, you informed the Commission that Carrfour is a social services agency that provides transitional housing to formerly homeless persons. Carrfour is in the process of building a facility on Miami Beach. Carrfour is requesting a conditional use permit from the Planning Board. The conditional use permit will define the permissible uses for the facility. You are one of six members on the Planning Board. Five votes are required for award of the permit.

The Ethics Commission found that although the Conflict of Interest and Code of Ethics

ordinance permits you to vote on the conditional use permit for Carrfour, an appearance of a conflict of interest may be created if you vote on this matter. Section 2-11.1(v) provides that "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 a 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." Since you do not have any of the enumerated relationships with Carrfour and you will not directly benefit from the Planning Board's action, you may vote on the matter.

Further, you are not barred by Section 2-11.1(n) which prohibits board members from taking action that will, directly or indirectly, affect a business in which the board member or a member of his immediate family has a financial interest. Since Carrfour is a non-profit organization and your daughter does not have a financial interest in the corporation, Section 2-11.1(n) does not bar your participation in this matter.

However, although not prohibited by the Conflict of Interest ordinance, an appearance of a conflict may be created if you vote on a matter involving a company of which your daughter is a vice-president.

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", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director