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June 24, 2005

Charles Le Clair  
Chair  
Miami-Dade HIV/AIDS Partnership  
3050 Biscayne Boulevard  
Suite 307  
Miami, Florida 33137

**RE: REQUEST FOR ADVISORY OPINION 05-50**

Dear Mr. LeClair:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 23, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of Section 2-11.1(v) to the activities of the board. The Partnership sought a clarification of a 2002 opinion.

In your letter, you advised the Commission that pursuant to federal law, the Miami-Dade HIV/AIDS Partnership was established to provide comprehensive planning for treatment and services to persons with HIV and AIDS. The thirty-nine member Partnership Board includes service providers and persons with HIV/AIDS. The board serves in an advisory capacity to the Mayor and the Board of County Commissioners.

The Partnership is required to develop a plan for providing services to the affected community and establish service priorities for distribution of the federal funds under

the Ryan White Act and other local, state and federal funding sources. Pursuant to Section 2-1104 of the Code of Miami-Dade County, the Partnership is exempt from Section 2-11.1 (c) and (d) of the Conflict of Interest and Code of Ethics ordinance. Members of the Partnership are governed by all other sections of the Conflict of Interest and Code of Ethics ordinance.

The Ryan White Act contains a Conflict of Interest provision that governs members of the Partnership. 42 U.S.C. § 300ff-12 (5)(B)(2001) provides that "an individual may serve on the planning council under paragraph (1) only if the individual agrees that if the individual has a financial interest in an entity, if the individual is an employee of a public or private entity, or if the individual is a member of a public or private organization, and such entity or organization is seeking amounts from a grant under section 300ff-11(a) of this title, the individual will not with respect to the purpose for which the entity seeks such amounts participate (directly or in an advisory capacity) in the process of selecting entities to receive such amounts for such purpose. "

In RQO 02-43, the Ethics Commission prohibited members from voting on funding recommendations in particular service categories if the member was one of three or less service providers in a particular area. The Partnership's current by-laws codifies the Ethics Commission opinion and states that "(m)embers may vote on funding recommendations that affect a specific category of service that includes themselves or their organization , but as under federal law, they may not vote on any funding recommendation that will specifically and directly benefit their organization. All members in specific service categories are prohibited from voting or funds in their specific service category of there are fewer

than three service providers in that category."

The Commission found the Conflict of Interest and Code of Ethics ordinance prohibits Partnership members from voting on funding recommendations that will directly affect the member's employer or an entity in which he or she has a financial interest. However, the Partnership member may vote on funding recommendations affecting a service category in which they are a provider as long as the member is not the sole provider in the particular category and the recommendation does not provide amounts or percentages among the providers in a particular area.

Section 2-11.1(v) provides that no advisory board member "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."

Under the language of this section, Partnership members may vote on funding recommendations regarding a service category as long as the member is not the sole provider in the category and the funding recommendation does not designate amounts or percentages among the various providers in a particular service category.

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 long horizontal line extending to the right.

ROBERT MEYERS  
Executive Director