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 STAFF GENERAL COUNSEL

March 21, 2006

The Honorable Joe Martinez  
 Office of the Chairman  
 111 Northwest First Street, Second Floor  
 Miami, FL 33128

Dear Chairman Martinez,

I am in receipt of your correspondence dated February 15, 2006 asking the Ethics Commission to provide you an opinion to four questions. One of the questions was previously answered in an earlier opinion I gave you. With respect to the remaining three questions, I conferred with the Chairman of the Commission on Ethics and the Commission's legal counsel. Each opinion is based exclusively upon the facts that you supplied this office in your February 15, 2006 correspondence.

You state in your request that Jorge Guerra is a family friend, for approximately fifteen years, and is assisting you in building your new home. You indicate that his company is doing the drywall and will be compensated accordingly and he is also supervising the subcontractors. You have reason to believe, on account of your friendship with him, that he will not accept payment for his supervision of the home's construction upon its completion. You inquire whether Mr. Guerra's refusal to accept compensation from you constitutes a gift. Additionally, you ask about the timing of reporting the gift and the valuation of these services, assuming the Ethics Commission concludes these activities amount to the giving of a gift.

Pursuant to County Code Section 2-11.1(e), a gift is defined as the transfer of anything of economic value without adequate and lawful consideration. Regarding the drywall work that Mr. Guerra is doing for you, this would not be considered a gift as long as the payment he is receiving for this work is consistent with the price he would charge others for the same job. If, however, he were to give you a discount (on account of your friendship), the value of the discount should be reported as a gift by you. Concerning his supervisory role overseeing the construction of your house, his services should be reported as a gift. Clearly, Mr. Guerra is providing a service to you for which you would otherwise have to pay and this falls within the meaning of a gift as defined by the County Code. Ascertaining the value of the gift would require you to find out from him what he typically charges others to perform the same function. My understanding is that most general contractors charge on a cost plus basis or a retainer with an hourly rate. In terms of reporting the gift, the date his oversight is completed is when the clock starts ticking. You would be required to file by the end of the following quarter to be in compliance with the ordinance.

Your second question relates to Mr. Guerra's son, Jorge, Jr. You mention in your letter that he has a GC license and pulled the master building permit for you. It is not clear from your e-mail whether the son works for the father's company – not that such information is necessary for this opinion. Moreover, you indicate that the son is on the board of the Latin Builders Association (LBA) and the LBA occasionally appears in front of the County Commission. Once again, if Jorge Guerra, Jr. usually charges individuals for pulling permits and didn't charge you, then this should be reported as gift as well. Due to the fact you stated the permit has already been pulled, you would have to follow the abovementioned reporting requirement to meet the statutorily-imposed deadline.

As a general proposition, there would be no conflict of interest if you meet privately with members of the LBA while the Guerras are playing some role in the construction of your home. Similarly, no voting conflict exists that would trigger a recusal on your part if the LBA appears in front of the County Commission during the same timeframe. The only potential conflict would be if Mr. Guerra, as a board member of the LBA, wishes to meet with you privately or appears in front of the Board of County Commissioners coinciding with time your home is being built. If Mr. Guerra were to appear before the BCC during this time, then you should absent yourself from the proceedings, which means you cannot participate in the discussions nor vote on any item where he, personally, is making a presentation to or is attempting to lobby the County Commission. Once the Guerras are disengaged from the project, then there would be no legal conflict that would require you to recuse yourself in the event Mr. Guerra wished to represent the position of the LBA in front of the County Commission.

However, consider the perception that is created if Mr. Guerra meets with you privately or if you stay on the dais in a case where he appears on behalf of the Latin Builders Association even substantially after your home has been completed. Given the benefit that you will have received from the Guerras, some will question whether you can objectively evaluate the information before you, knowing that the Guerras –donors of a fairly significant gift to you – are advocating for the Commission to take action on a particular matter. Obviously, this is a non-issue if LBA does not involve Mr. Guerra in its presentations before you.

Finally, you assert that Juan Buade, another friend of yours, built the home that you moved into in 1992 and he, too, wants to help with construction oversight. You anticipate that he will not accept compensation for his oversight work. You indicate that Mr. Buade is not giving you the shell and structure of the home for free, but rather he is contracted with a company which will be providing both the shell and structure and you will be paying the other company directly.

Once again, the gift rules apply to Buade providing services to you at no cost. This gift should be calculated that the time he has completed his oversight duties and the value of the gift is what he would customarily charge others for the same work. The reporting timeframe is the same as I described in the Guerra paragraph. If there is no magic formula for calculating the value of the gifts that you will be receiving from Mr. Buade and Mr. Guerra, Sr., you should attempt to arrive at a figure that represents a good-faith estimate of the value of these services. As I mentioned above, to the extent to which they generally bill on a cost plus basis or hourly, this could assist you in reaching a figure for reporting purposes that corresponds to the actual value of gifts.

Please understand that my analysis is confined to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance. For an interpretation of state law, please contact the Florida Commission on Ethics.

If you have any questions concerning this opinion, please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

Robert Meyers  
Executive Director

cc: Kerry Rosenthal, Chairman, Miami-Dade Ethics Commission