

ETHICS COMMISSIONERS

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

ROBERTA. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

July 19, 2006

Sharon Ryland
Department of Business Development
111 N.W. First Street
19th Floor
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION 06-44

Dear Ms. Ryland:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 13, 2006 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether an advisory board member may make decisions regarding a competitor while the board member and the competitor are vying for the same contract.

In the documents you provided the Commission, you advised the Commission that the Department of Business Development (DBD) began an investigation into whether Sereca Corporation was complying with the requirements of the Living Wage ordinance in 2005. The Living Wage ordinance requires county contractors and companies who provide services at certain county facilities, such as Jackson Memorial Hospital and Miami International Airport, to provide a certain wage. The Living Wage Advisory Board is charged with the responsibility of monitoring compliance with the ordinance including reviewing certifications from employers and

complaints from employees. The board meets monthly and is briefed by DBD staff on investigations, settlements and complaints regarding the ordinance.

In July, 2005, Annette Vergara of General Patrol Services was appointed to the Living Wage board. Vergara's firm is one of 27 firms certified to provide security services at the airport. After Vergara's appointment, Lan-Chile issued an RFP for security services. Lan-Chile is a client of Segara Security.

Subsequently, in September 2005, Vergara sent Lan-Chile an e-mail indicating that her firm was interested in providing security services. Vergara's e-mail stated that she was a member of the Living Wage board. According to the minutes of the Living Wage board, the Sereca investigation was not specifically discussed during the August or September meetings. The Sereca investigation was discussed during the October 2005 meeting. In March, 2006, the Living Wage board reviewed DBD's final determination regarding any violations by Sereca. DBD and the company are continuing to participate in discussions regarding any violations.

The Ethics Commission found the Conflict of Interest and Code of Ethics ordinance does not permit Vergara to make decisions regarding competitors while she and the competitor are vying for the same contract. Section 2-11.1(n) prohibits a board member from making decisions directly or indirectly affecting a business in which the person or a member of his or her immediate family has a financial interest. Since the board's recommendations and comments may be included in the final disposition of the matter between DBD and Sereca, Vergara's actions may affect Sereca. Any action that Vergara takes against a competitor may indirectly affect her own business interests. Therefore, Section 2-11.1(n) prohibits her from taking official action regarding a competitor.

Further, Section 2-11.1(e)(misuse of official position) prohibits Vergara from using her official position to benefit any person or entity and Section 2-11.1(h)(disclosure of confidential information) prohibits her from disclosing any confidential information acquired as a result of her service on the Living Wage board.

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 black ink, appearing to read "Robert Meyers", written in a cursive style.

ROBERT MEYERS
Executive Director