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February 28, 2008

Via First Class Mail  
and  
Fax at 305.412.3773

David R. Custin, President  
David R. Custin & Associates, Inc.  
6401 SW 113<sup>th</sup> Place  
Miami, FL 33173

Re: ROO 08-06

Dear Mr. Custin:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on February 27, 2008.

In your emails culminating on February 21, 2008, you asked the Ethics Commission to define the term "pending" as it is used in reference to a bid or award for goods, equipment, or services in the Miami Beach Ordinance at Section 2-488 (2)(a).

The Ethics Commission opined that under the above-referenced section of the City of Miami Beach Code, a bid or award is pending on the first day government commences any action in the decision-making process regarding the subject bid or award.

In the facts you presented regarding the City's contract for state lobbyist services, as a contributor to Ed Tobin's successful campaign for City Commissioner, you were prohibited from lobbying the City beginning on December 12, 2007; that date marks the City Commission's first action regarding this award—which was to refer the issue to the Finance and Citywide Projects Committee.

**THE MIAMI BEACH CODE AT § 2-488, *Prohibited campaign contributions by lobbyists on procurement issues*, states in pertinent part—**

(2) (a) A person ... who directly or indirectly solicits for or ***makes a contribution to a candidate*** who is elected to the office of mayor or commissioner shall be ***disqualified for a period of 12 months following the swearing in of the subject elected official from lobbying the city commission*** in connection with a present or pending bid for goods, equipment or services or on a present or ***pending award for*** goods, equipment or ***services***. (Emphasis added.)

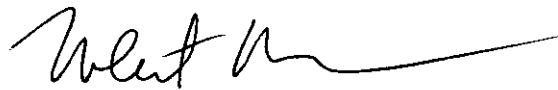
Although the term "pending" is not defined in the ordinance, the Ethics Commission was persuaded by the interpretation recommended by the City of Miami Beach. In a telephone conversation to this office on February 22, 2008, Miami Beach's Special Counsel stated that the City wished to prevent lobbying on a bid or award as soon as government took its first action in the decision-making process.

In the current case, the Ethics Commission reasoned that banning lobbying starting from the time the matter was referred to committee avoids undue influence at the formative stages of the bid or award. This early prohibition fulfills the spirit of the law, because issues frequently handled in committees, such as the requirements to be contained in an RFP, may significantly affect the selection of candidates who ultimately qualify to receive the award.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance and City of Miami Beach Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact Victoria Frigo, Staff Attorney, at 305.350.0601, or Robert Meyers at 305.579.2594, if we can be of further assistance in this matter.

Sincerely yours,



ROBERT MEYERS  
Executive Director

copies:

Jose Smith, City Attorney  
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