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July 9, 2008

Paul Raymond
4285 N. Meridian Ave.
Miami Beach, FL 33140-2939

Re: RQO 08-28

Dear Mr. Raymond:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on July 8, 2008.

In your letter of May 22, 2008, you asked if you could consult with private clients within the city limits of the City of Miami Beach for two years following your retirement as the City's Chief Mechanical Inspector if your clients had building permits issued to them while you were employed by the City.

Briefly, the Commission on Ethics opined that you may consult with private clients who were issued building permits during your employment, either through your own company or through another private firm, but you may *not* appear before the City of Miami Beach *to lobby* on behalf of your clients for two years following your retirement. *See* the County Code at § 2-11.1 (q).

The facts as we understand them are as follows: You served a Chief Mechanical Inspector for the City of Miami Beach from January 1992 until your retirement on April 30, 2008. You would now like to engage in a private engineering consulting practice within the City of Miami Beach.

In this capacity, you asked if you may perform private inspections, consult with clients on mechanical and related engineering matters, and otherwise engage in mechanical contracting with clients who had building permits issued while you served as the Chief Mechanical Inspector. Additionally, you asked the Ethics Commission to identify the types of activities that you may or may not perform within the City of Miami Beach during the two years following your retirement.

Two subsections of the County ethics ordinance govern these facts. First, the "two-year rule," which is found at § 2-11.1 (q), generally prohibits former government employees from appearing before their respective governments for two years following their public service. The ordinance further states, however, that—

Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this Subsection from *submitting a routine administrative request or application to a*

[city] department or agency during the two year period after his or her *[city]* service has ceased. (Emphasis added.)

The second relevant subsection of the County Code is found at § 2-11.1 (s), which defines “lobbyist” as someone who seeks to encourage the passage, defeat, or modifications of any ordinance, resolution, action, or decision of the city commission; any action, decision, recommendation of the city manager or any city board or committee; or any action, decision, recommendation of city personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city board or committee.

Lobbying has been interpreted very broadly by the Ethics Commission and includes many related activities not specifically noted above. The City of Miami Beach Code at § 2-481 defines lobbyist in the same way.

As for specific examples of allowable and unallowable activities, the Ethics Commission has issued several opinions relevant to you question.¹ In general, former government employees may communicate with their respective governments on ministerial issues, but they are prohibited from attempting to influence any type of government decision at their respective governments for two years following their government service.

Typical examples of ministerial activities *allowable* in person, via the phone, or through email or other electronic submission include the following:

- submit routine administrative requests or applications
- provide routine information to city personnel when asked
- research and request items
- confirm receipt of plans and permit applications
- inquire about the status of submitted plans
- advise clients about city regulations and policies
- include resume and qualifications in applications submitted to the city on behalf of clients
- attend quasi-judicial hearings and public meetings (but *not private meetings*) to provide administrative support to clients, as long as the former employee is not identified *publicly* as a member of a lobbying effort

Typical examples of activities that are *not allowed*:

- represent code violators at ticket appeal hearings and settlement negotiations
- attempt to persuade city to expedite the review process
- meet with city personnel or officials to discuss requested modifications to plans as part of the permitting process
- offer to make modifications to plans so that the plans can be approved more expeditiously

¹ See, particularly, **RQO 04-33** to Charles Danger, Director, Co. Building Dept.; **RQO 04-201** to Rene Rodriguez, retired Director, Co. Housing Agency; **RQO 04-34** to Danny Alvarez, former Director, Co. Transit Dept.; and **RQO 01-38** to Miguel de Grande re: Nick Mazzora, former Aide to Co. Commissioner Joe Martinez.

- arrange *private* meetings between clients and city personnel or officials to discuss client projects or make determinations with regard to client projects, *even if the former employee does not attend*
- use influence to promote any type of action, decision, or recommendation by city on behalf of clients

Former government employees are cautioned that written or verbal communications that are initially acceptable under the "two-year rule" could readily escalate into unacceptable lobbying, depending on the circumstances. Department personnel have the prerogative to refuse to meet with former employees if they believe they have been lobbied or will be lobbied.

Based on the foregoing, the Ethics Commission opined that you may consult with private clients who were issued building permits during your City employment, but you may not appear before the City of Miami Beach to lobby on behalf of your private clients for two years following your retirement.

This opinion construes the Miami-Dade County Conflict of Interest & Code of Ethics 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 faxed to 305.673.7002 to the attention of the following:

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