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March 23, 2009

Eugene Shy
County Attorney's Office
Public Health Trust
West Wing, Room 109
1611 N.W. 12th Avenue
Miami, Florida 33136

RE: REQUEST FOR ADVISORY OPINION RQO 09-11

Dear Mr. Shy:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 26, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether members of the Public Health Trust who also serve on the board of the Jackson Memorial Foundation may vote on foundation matters that come before the Public Health Trust.

In your request, you advised the Commission that the Jackson Memorial Foundation ("foundation") is a non-profit corporation whose function is to conduct fund-raising activities on behalf of Jackson Memorial Hospital. The foundation conducts its activities through acquiring funds and other assets from individuals, firms, corporations, governmental entities and other segments of the public. The funds are used to support the hospital by maintaining, constructing and equipping physical facilities at Jackson as well as supporting promotion, development and non-medical customer service at Jackson Memorial Hospital.

The foundation's board includes the Chair of the Public Health Trust in an ex-officio capacity, the chairs of other philanthropic organizations that provide financial support to the hospital, the immediate past chair of the foundation and the President and CEO of the Public Health Trust.

The Public Health Trust is currently reviewing a proposal to build a hotel and conference center on property owned by the hospital. The PHT is considering several development options including leasing the property to the Foundation for a joint development between the Foundation and the University of Miami or leasing the property to the University of Miami and having the foundation serve as Owner's Representative on the project. In the latter capacity, the foundation would facilitate and oversee the development agreement. The PHT will vote on the preferred option. The Board of County Commissioners will have final approval.

The Ethics Commission found the Conflict of Interest ordinance permits the Chair of the Public Health Trust to vote on foundation matters that come before the trust. Section 2-11.1(d) permits PHT members to vote on matters that do not affect them in a manner distinct than the manner in which it affects the general public. Section 2-11.1(d) of the Code of Miami-Dade County prohibits county commissioners from "voting or participating in any way in any matter presented to the Board of County Commissioner if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee fiduciary or beneficiary or (ii) stockholder, bondholder, debtor or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b) (1) in a manner distinct from the manner

in which it would affect the public generally. Any commissioner who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said manner." Section 24A-3(c) provides that "whenever in the Conflict of Interest ordinance reference is made to the Board of County Commissioners, that reference shall be deemed and construed to be a reference to the trustees of the Public Health Trust."

The foundation's sole purpose is to provide financial assistance to Jackson Memorial Hospital. The Chair's ex-officio service is an extension of his service as a member of the PHT. In RQO 02-105, the Ethics Commission opined that Commissioner Moss could vote on matter involving a contract between the POMCM and Miami-Dade County when he served as an ex-officio member of the POMCM board. The Ethics Commission opined that the service was an extension of Moss' service on the BCC and could not create a conflict of interest. Similarly, the Chair may vote on foundation matters because his foundation board service is an extension of his PHT service and cannot create a conflict because the foundation only exists to support the mission of the hospital.

PHT member Cancela may also vote on foundation matter because, under the standard of 2-11.1(d), the matters will not affect her in a manner distinct from the general public. Further, under the reasoning of the Moss opinion, the categories do not apply to organizations that exclusively serve to support a County function. Therefore, Cancela may vote on foundation matters.

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 Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director

cc: Ernesto De La Fe, Public Health Trust
Rosy Cancela, Public Health Trust