



FILE COPY

June 1, 2009

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Andrew Magenheimer
Slack Johnston Magenheimer, Inc.
7300 North Kendall Drive
Suite 520
Miami, FL 33156

RE: REQUEST FOR ADVISORY OPINION RQO 09-18

Dear Mr. Magenheimer:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on May 28, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether your firm may provide brokerage services to a buyer seeking to purchase leasehold rights at Tamiami Airport.

In your request, you advised the Commission that Slack Johnston currently provides real estate services to the Aviation Department. In that capacity, Slack is responsible for making recommendations for fair market rates for land, pavement and county-owned improvements at the County's general aviation airports. The rates are on a facility-wide basis and tenants are charged per square foot. Slack Johnston uses standard industry valuation methods in determining the fair market value and performs the services for a number of counties throughout the country.

In 1998, Miami-Dade County entered into a development agreement with Air-Sal, Incorporated for land and certain other property at Kendall-Tamiami Airport. The lots contained slab foundations and trusses that were the remnants of hangars that had been damaged by Hurricane Andrew. The agreement

provided that Air-Sal would be responsible for building new hangars on the space. The lease agreement provided that Air-Sal would pay an amount specified in the original agreement, for land only, for the first twenty-one years of the twenty-five year lease. Air-Sal would only begin to pay fair market rates on the twenty-second year of the agreement. Finally, although the original agreement provided that the development agreement would end with any assignment of rights or transfer of ownership, the agreement was amended in 2005 to permit the owner to sell the company.

Slack is seeking to serve as a broker for a firm that is interested in purchasing Air-Sal's leasehold at Kendall Tamiami Airport. The prospective buyer will also have access to the improvements on the property which includes the three hangars. The buyer will pay the brokerage fees. Any transfer of rights must be approved by the Aviation Department or the Board of County Commissioners.

The Commission found that Slack Johnston may provide brokerage services to a firm seeking to purchase Air-Sal's leasehold at the Kendall Tamiami Airport. Since the land rental rates charged by the Aviation are not tenant-specific, Slack Johnston's recommendations regarding any rates will affect all Kendall-Tamiami tenants equally. Moreover, since Air-Sal's land rental rates are fixed for the first twenty-one years of the lease (which extends for another ten years), the firm would not have a conflict in analyzing rates for Kendall-Tamiami airport because the fees would not affect Air-Sal or the buyer if the company assumed all the terms of the current development lease agreement.

However, Slack Johnston would be prohibited from serving as broker if the firm performed any services for the Aviation Department

specifically related to Air-Sal because the company would have acquired confidential information as a result of their consultant agreement. Accordingly, under the Conflict of Interest ordinance, Slack Johnston would be prohibited from other employment that might induce them to use the confidential information acquired from performing services specifically related to Air-Sal for the Aviation Department.

Therefore, Air Sal may serve as a broker for a firm seeking to purchase Air-Sal's interest at Kendall-Tamiami airport as long as the firm has not provided any services specifically related to Air-Sal. The firm is also prohibited from providing any services related to the Aviation Department approval process or rate negotiation between the Aviation Department and the new tenants.

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 cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director

cc: Miguel Southwell, Aviation Department