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October 1, 2009

Jose Abreu
Director
Miami-Dade Aviation Department
P.O. Box 592075
Miami, Florida 33159

REQUEST FOR ADVISORY OPINION-RQO 09-36

Dear Mr. Abreu:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 30, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any restrictions imposed by Section 2-11.1(q) (two-year rule) on the use of a former employee as a consultant on an on-going project.

In your letter, you advised the Commission that the North Terminal Development project consists of a new terminal attached to existing concourses A-D. The project includes a regional commuter facility (American Eagle) domestic and international gates, ticket counters, a federal inspection services facility, an automated peopled mover, fueling facilities and an automated baggage handling system. The North Terminal will be exclusively used by American Airlines.

Siemens Logistics and Assembly System is the contractor for the baggage handling system

for the North Terminal. Over the course of the project, the Transportation Security Administration (TSA), the Federal Aviation Authority (FAA) and American Airlines have requested numerous changes to the original baggage handling system. Max Fajardo, Deputy Director of the Aviation Department, was assigned oversight responsibility for the project and coordinated work on the project between Siemens, the various agencies and American Airlines. Fajardo is scheduled to retire on September 30, 2009. After retirement, Fajardo will become Vice-President of TY Lin International/H.J. Ross.

TY Lin is currently a subconsultant on the North Terminal program. The Aviation Department would like to issue a work order under the current agreement with TY Lin for Fajardo to assume responsibility for oversight of the North Terminal baggage handling system. The responsibilities would be similar to his current duties for oversight of the project. The baggage handling system is scheduled to become fully operational by the spring of 2011.

The Commission found that the Conflict of Interest and Code of Ethics ordinance permits Fajardo to serve as a consultant providing oversight and management of the baggage handling system for the Aviation Department. Section 2-11.1(q) (two-year rule) only prohibits former employees from lobbying county officials during the two years after they leave county employment.

Section 2-11.1(q) provides that "no person who has served as an elected county official, County Manager, senior assistant to the County Manager, department director, departmental personnel or employee " shall for a period of two years after his or her County service has ceased, lobby any County officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid,

request for ruling or other determination, contract, claim, controversy, charge or accusation in which Miami-Dade County or one of its agencies or instrumentalities is a party or has any interest whatever, direct or indirect." The Conflict of Interest ordinance broadly defines lobbying as seeking to influence county staff, the County Manager or any member of the Board of County Commissioners during the entire decision-making period of any legislative action, decision or action that may foreseeably come before the Board of County Commissioners or any County board."

Section 2-11.1(q) permits Fajardo to provide management and oversight of the project because he will not be engaged in lobbying activities. The two-year rule permits former employees to provide management and oversight of county projects (See RQO 08-18) including coordination of activities between Miami-Dade County, outside agencies and county contractors. Further, Section 2-11.1(q) permits Fajardo to meet with county staff and appear before county boards and committees as long as any appearance is on behalf of the Aviation Department (See RQO 01-01). The lobbying ordinance only applies to persons representing third parties who are seeking government action in their favor.

Accordingly, the Aviation Department may engage TY Lin and Fajardo to provide management and oversight of the North Terminal baggage handling system. Fajardo may also meet with county staff, officials and agencies on behalf of the Aviation Department. Fajardo would still be prohibited from meeting with county staff and officials on behalf of Ty Lin or any other TY Lin/HJ Ross clients.

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", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director