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May 20, 2010

ETHICS COMMISSIONERS

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EXECUTIVE DIRECTOR

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ARDYTH WALKER
STAFF GENERAL COUNSEL

Miguel De Grandy
Miguel De Grandy, P.A.
800 Douglas Road
Suite 850
Coral Gables, FL 33134

RE: REQUEST FOR ADVISORY OPINION RQO 10-13

Dear Mr. De Grandy:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on May 19, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the Citizens' Bill of Rights permits discussion of a solicitation covered by the Cone of Silence during a duly noticed meeting of the Board of County Commissioners.

In your letter, you advised the Commission that on March 2, 2010, the Board of County Commissioners voted to modify the requirements of an RFP for Special Transportation Services (STS). The modification arose out of an earlier decision to extend the current contract until the solicitation process could be completed. During the discussion, the Board of County Commissioners requested updates on the status of the current service and the solicitation. Monthly reports were to be provided to the Transit Committee.

Subsequently, during the March Transit Committee meeting, the Procurement Director updated the commissioners on the release of

the amended solicitation. During the oral presentation, the commissioners asked questions regarding various features of the proposal which had elicited concerns from prospective vendors. The Procurement Director stated that she would issue an addendum clarifying some of the issues raised during the committee meeting.

During the April meeting, the Transit Committee received its monthly update on STS services. During the meeting, questions were again raised regarding various aspects of the RFP. The agenda item was listed as "Monthly Special Transportation Services Report" as it was listed on the March agenda. The requestor was recognized to make a statement but concerns were raised as to whether the committee could properly discuss a solicitation covered by the Cone of Silence without specific notice that the RFP would be discussed at the meeting.

The Commission found the Cone of Silence permits discussion of a covered RFP during a duly noticed public meeting. Section 2-11.1(t)(1)(a) provides that "the "Cone of Silence is hereby defined to mean a prohibition on a) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including but not limited to the County Manager and his or her staff and b) any communication regarding a particular RFP, RFQ or bid between Mayor, County Commissioner or their respective staff and any member of the County's professional staff including , but not limited to the County Manager and his or her staff." Generally, the Cone of Silence applies between the time of advertisement and the submission of a written award recommendation from the County Manager to the Board of County Commissioners.

The Cone of Silence contains a specific exemption for duly noticed public meetings. Section 2-11.1(t)(1)(c) provides that " the provisions of this ordinance shall not apply to oral presentation at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, **public presentations to the Board of County Commissioners during any duly noticed public meeting** or communications in writing." Under this exemption, a Commissioner or a member of the public may discuss a covered solicitation during any duly noticed meeting of the Board of County Commissioners. The notice requirement does not specify that the RFP has to be specifically or specially noticed on the agenda. Therefore, the Board of County Commissioners or a member of the public may properly discuss this solicitation or any covered solicitation during a duly noticed meeting of the Board of County Commissioners.

The Citizens' Bill of Rights is not in conflict with the Cone of Silence. Section (a)(5)(right to be heard) provides that "So far as the orderly conduct of public business permits, any interested person has the right to appear before the commission or any municipal council or any county or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved." The Ethics Commission has previously held that the right to be heard is not absolute and that the Board of County Commissioners may adopt reasonable rules regarding time and place of public discussion. See RQO 09-39. The Cone of Silence provides permissible rules regarding when public discussion may take place regarding covered solicitations. In accordance with the Citizens' Bill of Rights, the Cone of Silence permits discussion in writing or during duly noticed public meetings. Therefore, the Cone of Silence does

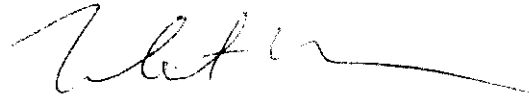
not impermissibly restrict the right to be heard granted under the Citizens' Bill of Rights.

Accordingly, the Cone of Silence permits discussion of a solicitation covered by the Cone of Silence during any duly noticed public meeting of the Board of County Commissioners and does not impermissibly restrict the right to be heard granted by the Citizens' Bill of Rights.

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

ROBERT MEYERS
Executive Director