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## Commission on Ethics & Public Trust

Miami-Dade County

# Memorandum

**To: Miriam S. Ramos**

**File K14-134**

**Date: January 6, 2015**

**From: Robert Steinback**

**Re: Ballard Partners lobbyist conflict waiver request**

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### The issue and the County's position

The purpose of this analysis is to consider whether the law firm Ballard Partners, which represents Miami-Dade County in a lobbying capacity for several issue areas, would create a conflict of interest in under Miami-Dade Board of County Commissioners (BCC) Resolution No. 1017-10 by representing the for-hire company Uber Technologies Inc. (Uber) before the BCC, in the State Legislature, and elsewhere in Florida.

In Florida, the hired-car industry – primarily taxis and limousine services – is controlled at either the county or city level. Miami-Dade County issues licenses and establishes regulatory practices for for-hire vehicles in its jurisdiction; in Broward, cities generally regulate taxi services.

In recent years, a new for-hire car industry has emerged, with as many as eight firms contracting with private car owners to carry customers using a smartphone-based app to reserve point-to-point rides to their destinations at pre-arranged prices. Prominent among these firms is Uber Technologies, a San Francisco-based company that presently operates in 53 countries and over 200 cities (source: Wikipedia). The company is worth an estimated \$40 billion.

Uber and similar companies have utilized various strategies to enter particular markets, ranging from simply starting service and essentially daring local authorities to intervene, to working with local authorities in the hope of winning changes in taxi and limousine regulations that would allow them to operate. Another firm in this emerging industry, Lyft, began unauthorized service in Miami-Dade County in May 2014, according to Joe Mora, division chief, for-hire transportation, for the county's Department of Regulatory and Economic Resources (RER), which among other duties oversees the Taxi Advisory Group. Uber, evidently unwilling to allow Lyft to gain a competitive advantage, soon followed suit. The county has determined that drivers for these firms are operating illegally, Mora said. He estimated that since Lyft began

operation in Miami-Dade, the county has issued over 700 violations to drivers for the various app-based for-hire car service companies. Mora said that the wording of the county's existing ordinance allows it only to cite drivers for violating the taxi ordinance, not the companies they work for.

In a June 2, 2014 letter to Jorge Luis Lopez of the Jorge Luis Lopez Law Firm, county Mayor Carlos Gimenez outlined why Uber, Lyft and other app-based for-hire firms were in violation of Chapter 31 of the Miami-Dade County Code. [Attachment A]

He wrote:

“...Section 31-303 (a) of the Code provides that it shall be unlawful for any person to drive any for-hire vehicle over any street in Miami-Dade County without first having obtained a chauffeur's registration form from the Department of Regulatory and Economic Resources (RER). Similarly, Section 31-82 (a) of the Code states that it shall be unlawful for any person to use, drive or operate, or to advertise in any medium accessible to the public that it offers for-hire services, or to cause or permit any other person to use, drive or operate any for-hire motor vehicle upon the streets of Miami-Dade County without first obtaining a current and valid Miami-Dade County for-hire license.

“The Code provides that any person found in violation of the above provisions will be subject to monetary penalties of \$1,000 for each infraction. Repeat violations can be punished by fines in an amount between \$5,000 and \$10,000 and/or imprisonment not to exceed forty-five days. The Code also authorizes police officers and RER enforcement staff to seize and impound any motor vehicle if there is probable cause to believe that it is being used to provide for-hire services without the required for-hire license.”

Gimenez stated that he had directed his administration to draft a proposal to modernize existing regulations to allow such companies to operate in Miami-Dade County, but emphasized that current law prohibited their operation. The status quo, thus, is that Uber, Lyft and similar services cannot operate legally in Miami-Dade County unless they conform to regulations that now govern taxis and limousines. To date, this situation has not changed.

During the 2014 session of the Florida Legislature, Uber was among several app-based for-hire car firms that sought passage of bills that would hand regulation of the for-hire ride industry to the state, thus pre-empting local regulatory control. This became a high-visibility issue in Tallahassee, with taxi operators showing up en masse to oppose the legislation. According to Miami-Dade Assistant County Attorney Jess McCarty, Florida counties and cities generally lined up against the legislation as well, but mostly in opposition to the state's bid to pre-empt their authority, not specifically in opposition to the business model proposed by Uber and its peer companies.

The bills sponsored by Uber were SB 1618 and HB 1389. The Senate bill died in committee; the House bill died on the Calendar, and thus were never considered by the full chambers.

McCarty said it is likely Uber, Lyft and the other ride-share companies will renew their pre-emption initiative in this year's Legislative session. However, Brian Ballard (Ballard), president of Ballard Partners, expressed more uncertainty in this regard. Ballard stated that his company is presently representing Uber (and only Uber, among the other app-based for-hire firms) in other Florida cities including Tampa and Orlando. He said the political environment in Tallahassee – specifically, opposition to the 2014 initiative by incoming Senate President Andy Gardiner of Orlando – might dissuade the company from attempting to revive the 2014 legislation it previously advocated. Ballard stated that his firm had not discussed strategy with Uber with respect to Miami-Dade County, but his comments implied that Uber might refocus its political efforts on persuading the County's representatives to clear a path for it to operate, as it is attempting to do in other Florida cities, rather than pushing for state pre-emption of local taxi regulations.

These facts influence the question of a potential conflict of interest. According to McCarty, the County's position on the 2014 bills in Tallahassee was to oppose state preemption of the for-hire car industry. On a local level, however, the County has not yet established a position on the Uber business model, except insofar as making no changes in current law would presumptively be an endorsement of the status quo preventing firms like Uber from operating.

McCarty's observation is that individual County elected officials have different views on Uber – he stated that Mayor Carlos Gimenez, for one, supports the company's entry into the local market. Nevertheless, McCarty's view is that the County would still likely to oppose a 2015 version of the above-noted 2014 bills based on its opposition to state pre-emption of regulatory authority, should such bills be introduced.

#### Activities of Ballard Partners on behalf of Miami-Dade County.

Ballard Partners is contracted with Miami-Dade County to lobby the executive and legislative branches of state government.

The contract, RFQ801d, Article 4, pp. (f), [Attachment B] prohibits firms so contracted from “represent[ing] any client and/or issue that may be adverse to the County without first requesting permission from the County.”

Certainly a conflict would arise if a lobbying firm which has represented the county on an issue also represented a client in direct opposition to the county's position. This does not appear to be the case with Ballard Partners . According to McCarty, lobbying on taxis and other consumer issues for the county is handled by another firm, the Pittman Law Group. [See Attachment C, page 7 [add topic assignment list].

Ballard Partners' general issue area assignments, as established by McCarty, are as follows:

- Home Rule Charter
- Film/Entertainment
- Airports (with Akerman Senterfitt)

- Capital Improvement
- General Government/Labor/Employment
- Public Records
- Building/Building Code Compliance
- Economic Development (with Rutledge/McKinley)
- Housing
- Animal Services

Ballard Partners' assigned lobbying issue areas are as follows:

- Animal Services
- Aviation (with the firm Akerman Senterfitt)
- The Homeless Trust, specifically the Sadowsky Housing Trust Fund (with the Pittman Law Group)
- Internal Services – specifically re: Alternative fuels and the Consultants Competitive Negotiation Act
- Police, specifically body cameras
- Public Housing (with the Pittman Law Group)
- Economic development and international trade, specifically the State Enterprise Zone Program and job training initiatives for the under-employed

Of these, the potential areas of conflict regarding Uber's likely legislative agenda would appear to be: Airports, General Government/Labor/Employment, and Economic Development. The investigator spoke with Brian Ballard, president of Ballard Partners, and Sylvester Lukis (Lukis), managing partner of Ballard Partners, about each of these areas and whether any might present a conflict with the Uber issue.

Airports: Taxis are an important aspect of the overall transportation service provided by airports. However, Ballard said the firm's role on behalf of Miami-Dade County regarding airports had to do with a tax on jet fuel, which would have no direct connection with for-hire car services. Lukis said the firm's activities do not involve any aspect of airport operations.

General Government/Labor/Employment: Taxi regulation could conceivably come under the heading of General Government, Labor or Employment. However, Carol Bracy (Bracy),

Ballard Partners' vice president who is based in Tallahassee, stated that the specific issues Ballard Partners handles in this category are proposals by the state to preempt local ordinances regarding wage theft, paid leave and sick benefits. She stated that the firm's work in this category relate exclusively to labor issues, and is in no way connected to the for-hire vehicle industry.

Economic Development: Taxi companies might broadly be considered as part of the county's economic development scheme. However, Ballard and Lukis said the firm's specific role on behalf of Miami-Dade County concerned getting money appropriated for enterprise zones. Again, this issue has no obvious connection to for-hire car services.

Asked if the county's position on the issue could be compromised by having a lobbying firm that might represent the county on one hand standing in opposition to the county on this issue, McCarty said that the network of professional lobbyists and legislators in Tallahassee is such a small and specialized one that it is not unusual for lobbying alliances to change from issue to issue. In this way, McCarty expressed the view that he did not regard Ballard's representation of Uber to be problematic.

Lukis stated that Ballard Partners' purpose in representing Uber is not so much to challenge or pressure the County to alter its policies regarding for-hire car services, but rather to be in a position to respond to the County's already-expressed interest in reviewing its policies. Lkkis noted that the County Commission has already expressed this interest at the committee level. Further, he stated that Mayor Gimenez has also expressed this interest. "We're not trying to do something against what the County Commission wants to do," Lukis said. "The County Commission has already indicated a desire to review for-hire County codes. If that's what they do, we will try [to be in a position to provide] input."

#### Current County Proposals related to the for-hire vehicle industry.

Alex C. Annunziato, legislative director for BCC Vice Chairman Esteban Bovo, informed the investigator that the Commissioner has proposed legislation that would make it legal for application-based for-hire vehicle services like Uber to operate in Miami-Dade County. He offered a status report on the measure, referred to as Transportation Network Entities legislation:

"Transportation Network Entities legislation [is] currently pending before the [BCC's] Transportation and Aviation Committee. [The measure was considered by the committee on January 6, 2015]. The item was deferred by the committee chair, Commissioner Dennis Moss, after then Chairwoman Rebeca Sosa requested that all pending for-hire transportation legislation be brought before the full commission during a 'workshop' designed to educate the Board regarding the various pieces of concerning for-hire transport. To date, no workshop has been scheduled. It is our intention to press the TAC committee for an up or down vote once Chairman Monestime has made the permanent committee assignments.

Briefly, our legislative proposal would allow ridesharing applications, such as Uber & Lyft, to operate for-hire vehicles legally in Miami-Dade County. Our proposal would require drivers working for Uber and Lyft to obtain a chauffeur license through RER and meet all of the competency requirements currently imposed upon limo and taxi drivers. The proposal would also require owner/operators to subject their vehicles to annual mechanical inspections and provide proof of liability insurance consistent with state law.”