

OFFICE OF THE INDEPENDENT ADVOCATE
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
REPORT OF INVESTIGATION

K #: K09-046

Date Opened: April 23, 2009

Date Closed:

Investigators: Karl Ross

Allegation:

During an April 22, 2009, Miami Beach City Commission meeting, Comm. Saul Gross publicly called into question whether Comm. Jerry Libbin had been improperly lobbied by Miami Beach parking executive and political activist Frank Pintado, in violation of Sec. 2-481 of the city of Miami Beach's municipal code. The allegation concerned an e-mail Pintado sent Comm. Libbin prior to the March 18, 2009, city commission meeting that contained an attachment. The attached document provided information and analysis supporting an item placed on that day's agenda by Libbin, to discuss terminating the contract of the city's incumbent parking vendor and Pintado business rival, Imperial Parking Inc. (Impark). The contract is worth about \$10 million over three years. Impark, at the time the item had been placed on the agenda, had held the contract for about six months. The Commission on Ethics (COE) subsequently opened a case at the direction of the Independent Ethics Advocate to determine whether Pintado directly or indirectly lobbied Comm. Libbin without being properly registered.

Investigation:

At the March 18, 2009, commission meeting, Comm. Libbin introduced his item, R9E, titled "Discussion regarding a consideration to cancel the parking contract issued to Impark," and advocated stripping Impark of the contract after six months due to what he considered poor management, subpar service and other alleged irregularities. Commissioners Victor Diaz and Deede Weithorn voiced reservations about Impark's performance, citing the company's alleged failure to comply with a provision of the contract requiring all employees to receive CPR training. Commissioners Jonah Wolfson and Saul Gross openly disagreed with critics of Impark's performance, with Gross condemning the item as "blatant, naked politics," while Wolfson alleged Libbin was trying "to do a favor for a buddy" – Pintado – who was supporting his re-election bid. Mayor Matti Bower also stated she believed the move to rescind Impark's contract was politically motivated. City Manager Jorge Gonzalez, when asked, voiced his opinion that it was "too early in the game" to consider terminating Impark's contract for alleged deficiencies. He said staff usually conducts an annual review and that, if warranted, staff could make a recommendation to terminate to the commission at that time. He further stated that the types of problems cited by Libbin in his opening remarks were typical of those encountered by a new vendor during a transition period. Lastly, Comm. Wolfson warned that premature termination of Impark's contract could expose the city to

legal action. Impark lobbyist Mitchell Bierman advised Impark has spent "hundreds of thousands of dollars in start-up costs."

On or about April 14, 2009, it was determined Pintado is not a registered lobbyist, according to the city of Miami Beach's lobbyist register.

At the April 22, 2009, city commission meeting, Comm. Libbin opened the debate by starting to recite a list of grievances against Impark. He was interrupted by Mayor Bower, who said such a list would be unnecessary if it was Libbin's intention the Impark contract be terminated for "convenience" as opposed to non-performance. Comm. Gross stated for the record that he had spoken to the city's legal advisor, Joe Smith, and that Smith ruled that no charter violation had occurred as a result of the city's waiver of the CPR requirement as it related to Impark. Gross went on to say that terminating a contract for "convenience" was acceptable so long as the city could show that it was acting in good faith, but cautioned: "I think the city is putting itself in the position that the city is going to be liable for substantial damages for acting in bad faith." Gross confronted Libbin about whether he had spoken to Pintado regarding the item to terminate Impark's contract. Libbin initially denied any communication with Pintado, but clarified he did receive an e-mail from Pintado and that the attached document was prepared by an individual named J.P. Morgan, not by Pintado himself. Libbin eventually denied having been lobbied by Pintado on the parking issue, adding he

didn't think he even looked at the e-mail attachment from Morgan. He stated Morgan serves on the city's Transportation & Parking Committee (TPC). Gross stated he did not believe Libbin and alleged: "I believe that the corruption is continuing ... that this is a second bite of the apple for the contract through Standard, that [Pintado] has been working with you himself or through J.P. Morgan ... or both." He added: "If Frank Pintado is a lobbyist, God bless him. Let him register as a lobbyist. I don't have a problem with that. I do have a problem with him operating in the shadows ... Just play by the rules." Comm. Wolfson said he also believed Pintado had acted as an unregistered lobbyist on the parking issue. He went on to say, "A vote for another RFP is a vote for Frankie Pintado." He stated, moreover, that if the city terminates Impark's contract and issues a new RFP, this would "send a chilling message that this body is essentially corrupt." He said that to do so would undermine "the public trust." The item passed by a 4-3 vote with commissioners Libbin, Diaz, Weithorn and Ed Tobin in favor of issuing a new RFP for parking operations.

On May 15, 2009, COE made a public records request for copies of any and all e-mails between Comm. Libbin and Pintado, from Jan. 1, 2008, to the present. The request was subsequently expanded to include e-mails to and from Pintado and all Miami Beach city commissioners. On May 19, COE received a copy of the e-mail sent to Comm. Libbin prior to the March

18 meeting, including the attached document. COE subsequently verified with the city's IT department that the attachment had not been altered.

At the May 18, 2009, city commission meeting, a resolution was adopted by a 5-2 vote to terminate Impark's contract. Comm. Wolfson called the vote "a big sham" and alleged the purpose of the measure was "to bring back Frank Pintado," who had previously held the city's parking contract through a joint-venture with Standard Parking, a national parking operator. City Manager Gonzalez said that a new RFP would be advertised on May 14, with a pre-proposal meeting on May 28. He said the deadline for prospective vendors to submit a proposal would be June 19. He said the evaluation would be based 60 percent on price and 40 percent on other criteria.

On May 19, COE interviewed Impark lobbyist Brian May, who advised that Pintado had not registered as a lobbyist on the parking issue. He noted City Attorney Smith did not find any wrongdoing on Impark's part with respect to the CPR issue. He noted the city manager's position that there was no just cause for terminating the contract. He said that, in his opinion, the contract had been politicized. He said Libbin needs Pintado's support among elderly Hispanic voters and that commissioners Tobin and Weithorn are similarly kowtowing to Pintado for political reasons. He said the two commissioners want a political ally, activist Fred Carlton, to win a seat and help them to extend their influence over city affairs. He suggested they were going along

with Pintado in order to keep him from campaigning against Carlton. He said Pintado has been very supportive of Comm. Diaz's "pet charity," the non-profit group UNIDAD. He said he believed it was disingenuous for Pintado to claim he was not lobbying Libbin by forwarding the e-mail in question on the morning of the commission meeting. He said he doubted Morgan acted alone in composing the attached document, adding that whoever wrote it "knows a lot about the parking contract."

On May 20, COE searched Citydebate.com for articles relating to Frank Pintado, finding two posting. The first, published in February 2007, was an "open letter" from Pintado "to the residents of Miami Beach" in which he discusses the needs of the elderly "especially during the holiday season" and highlights "a small project at Council Towers, the housing project for the elderly in South Beach." He goes on to state that this goodwill project was supported by Standard Parking. He further cites a toy drive sponsored by Standard Parking and UNIDAD, dating back to 2000. He also mentions the elderly program gives gifts to seniors at Rebecca Towers. He signs the letter as Frank Pintado of Standard Parking. The second such article on Citydebate.com is a December 2008 article about the Standard Parking/ UNIDAD toy drive, soliciting contributions to underwrite the program, which is said to deliver 700 gifts to needy children and 300 to the elderly. Again, Pintado signs as an executive with Standard Parking.

On May 21, COE requested copies of any Form 1 financial disclosures or other paperwork on file with the city clerk's office for J.P. Morgan, as a member of the city's Transportation & Parking Committee.

On May 22, COE received and reviewed copies of the Form 1 financial disclosures for all Miami Beach elected officials, including Comm. Libbin. Libbin works as an investment advisor and insurance salesman. He also has income from investments and rental property, according to the forms provided by the Miami-Dade Elections Department.

On May 26, COE interviewed City of Miami Beach Procurement Director Gus Lopez and Parking Director Saul Frances at city hall. Lopez provided background about the previous year's RFP, resulting in Impark being awarded the parking contract after it had been held by Standard and Frank Pintado for the previous nine years. He noted that Standard did file a bid protest and that the city manager did not uphold the protest. He said that Pintado did not attempt to directly lobby him during the procurement phase, but mentioned he received numerous emails from aliases such as Bruce Lee and Lance Armstrong he suspected could be traced to Pintado. He said he had reason to suspect Pintado was colluding with J.P. Morgan, and stated he felt that he had been lobbied by Morgan during the 2008 procurement cycle. He said Morgan called him on his cell phone on one or more occasions and made statements he felt were favorable to Standard

and Pintado, promoting their interests. He stated a so-called news story on Morgan's blog (Citydebate.com), published under Morgan's byline, was a verbatim reprint of Standard Parking's bid protest letter, including charts identical to those in Standard's protest. He further noted Morgan – during a Transportation & Parking Committee meeting – made remarks that were critical of his proposed criteria for the 2008 parking RFP and that would have served to limit competition, thereby helping Standard in its bid to retain the contract. Parking Director Gross stated he agreed with City Manager Gonzalez's public comments that the litany of alleged deficiencies and shortcomings highlighted by Comm. Libbin during the March 18 meeting were not unusual, especially for a new vendor. He said such problems – including occasional shortages in cash counts and customer complaints – are inherent in the parking business and that the frequency of such complaints and occurrences since Impark took over are comparable to those that occurred during the period Standard held the contract.

On May 26, COE received an email from Gus Lopez with the following link from the Citydebate.com Website, which Lopez said was a verbatim copy of Standard Parking's letter of protest over its failed effort to keep its contract:

<http://www.citydebate.com/florida/miamibeach/stories/0104050801.htm>

COE examined the article in question, and found it to be highly favorable to Standard Parking and lacking any opposing viewpoints.

On May 27, COE received a copy of Impark's Feb. 27, 2009, letter to Miami Beach elected officials and copied to senior staff in which Impark addresses the item sponsored by Libbin to consider terminating its contract. This letter is important because the attached document sent to Libbin on March 18 – the morning of the meeting – is, in essence, a rebuttal to Impark's letter and addresses Impark's claims on a point-by-point basis.

On May 28, COE received an e-mail from the city clerk's office advising that Comm. Libbin does not have a city-issue cellular phone. As a result, the city was unable to respond to an earlier request from COE for a copy of the commissioner's cell phone records for the early part of 2009. It had been hoped such records would document calls between the commissioner and Pintado, whose cell number is (305) 796-8416. It should be noted that Comm. Libbin subsequently declined to voluntarily provide his phone records, ostensibly on the advice of his legal counsel.

On June 1, COE attended a Transportation & Parking Committee (TPC) meeting in order to identify Morgan's voice and to observe how the committee functions. On June 3, COE listened to audio recordings of a Feb. 4, 2008, TPC meeting during which Morgan called into question the criteria set forth by Procurement Director Lopez for the RFP, contending it was too broad and would allow unqualified vendors to submit proposals. He said the effect would be to "lower the bar" among vendors. Lopez cautioned it might

be inappropriate to discuss such matters as selection criteria as the RFP was still under consideration by the evaluation committee and the cone of silence remained in effect. Lopez went on to say that, in his view, it was in the city's interest to ensure maximum competition among vendors. A copy of the minutes for said meeting was also obtained by COE.

On June 4, COE received items in response to a public records request concerning J.P. Morgan. The items included a letter from City Clerk Robert Parcher dated Dec. 24, 2008, indicating Morgan had been re-appointed to the TPC at the request of Comm. Weithorn. COE also received a copy of Morgan's financial disclosure documents showing his business interests, including Citydebate.com and Morgan Transportation. (See file.)

On June 23, COE called Morgan to schedule an interview, asking that he make a voluntary statement. Morgan expressed that he thought the investigation was a waste of time, and accused commissioners Wolfson and Gross of "crying cop." He alleged he overheard the two of them at a local restaurant discussing the parking issue the morning after a city commission meeting in violation of state open meeting laws, but said he was not one to go "crying cop" about such matters. He said that, with respect to the e-mail received by Comm. Libbin, he was simply away from the office the morning of the commission meeting and therefore contacted

Frank Pintado and asked Pintado to forward the information to Libbin. He agreed to be interviewed at a location convenient to him.

On June 26, COE received an e-mail from the city clerk's office advising that the request for copies of any and all e-mail from Pintado to Miami Beach elected officials had been carried out and that only three such e-mails had been identified. COE examined the e-mails in question, and found that two out of three were not pertinent to the investigation. Only the e-mail sent to Libbin on March 18 could be found to be pertinent.

On June 30, COE met with Morgan at a Miami Beach coffee shop to interview him about his involvement in the parking matter. He began by telling investigator he felt the 2008 parking RFP had been "rigged, in my opinion" and that the awarding of the contract to Impark had been, in his view, tainted by political machinations. He said he has been outspoken about his concerns on parking matters at city's Transportation & Parking Committee. He also said he expressed his views about the 2008 RFP in an April 5 article on his Website, which he described as "my first analysis on the RFP" and characterized the article concerning the selection process as being a result of his enterprising reporting. He did allow that "I wear two hats" – one as a TPC member and the other as "a journalist." Morgan said he assembled the document attached to the March 18 e-mail to Libbin after compiling information from a public records request in early 2009. He said

his interest in Impark's performance stems from his involvement on the TPC and not from any loyalty to Pintado, his friend, or from any financial or other arrangement with Pintado's business partner, Standard Parking. He said he decided to provide Comm. Libbin with the document in question because he knew Libbin was the sole dissenting vote in 2008, when the contract was awarded to Impark. He said he did not directly supply the information to any other commissioners, though he said City Manager Gonzalez created a PDF file that he circulated among commissioners and posted on the city's Website. Morgan allowed that he created a report – based on the e-mails and other records obtained through his records request – and that he did consult Pintado during the process of preparing said report. He said he showed his report to Pintado to check the findings for accuracy. He said Pintado told him the findings seemed accurate and did not provide any other input. He said that on the day of the March 18 commission meeting he was away from his office, and asked Pintado to e-mail Libbin. He said he does not know if Libbin ever saw the attached document. Asked about the attachment, Morgan claimed he was unaware it seemed to be a response to Impark's Feb. 27 letter to city officials. He said he was not familiar with this letter, signed by Impark General Manager Chester Escobar. Morgan went on to say he did not recall writing the initial paragraph on the attached document, containing what appeared to be introductory remarks that state "anybody that received this letter (and we all did) should be insulted by their response for the following reasons" ... He suggested that paragraph could

have been "cut and pasted," though he didn't know by whom. He said that the version of the report he gave Pintado was different from the version that Libbin received, but did not know how the modifications took place. He said he would check his original records and get back to investigators. Morgan told COE he has known Pintado for about 10 years since meeting him in connection with his nonprofit, Teen Job Corps. He said Pintado donated hats and T-shirts and they have remained friendly ever since. He said he considers a friend anybody who was not his enemy. He stated he has never had any business dealings with Pintado or Standard Parking, adding: "I make nothing from Frank Pintado or Standard Parking. I call him whenever I have questions about anything ... I've never pitched for him." He said he could not recall how many phone calls he might have made to Pintado to discuss the Impark matter and his corresponding research. "I can't say I did (call him), and I can't say I didn't ... I can't recall any specific conversation." He said he was aware Standard Parking would not be submitting a proposal in response to the city's recent RFP, thereby invalidating the claims, he argued, of critics such as commissioners Wolfson and Gross that Libbin was seeking to re-install Pintado and Standard as the city's parking vendor. He said he was not aware whether Pintado was involved with any other vendors that might be responding to the city's latest RFP.

On July 6, COE spoke to Ricky Hibbert of the city's IT department. Mr. Hibbert said he checked with the vendor for the city's e-mail program

(Symantic) and was assured that the document attached to the March 18 e-mail had not been altered or modified after it was received. He said the date and time stamp on the document make it clear the document was intact.

On July 7, J.P. Morgan contacted COE and said that, after reviewing his personal records, he now believes the document sent as an attachment to Comm. Libbin was an exact match to the document he gave Pintado, "right down to the commas." (This was a reversal of his earlier statement that the document had been altered or modified, or "cut and pasted.") He further changed his account by stating that he did, in fact, write the introductory comments referencing the Impark letter and that he did so with the intention of "scripting" the remarks for Comm. Libbin. He said he did this so that Libbin could read the document from the dais during the commission meeting, without having to sort through all the source documents he obtained from the city through the records request. "The entire document was scripted out for him so he would not have to sift it out on the dais," Morgan said. He then alleged that COE's copy of the Feb. 27 letter from Impark's Chester Escobar was "a forgery" and that this alleged forgery was created in order to somehow implicate him (Morgan) in wrongdoing.

On July 13, COE interviewed Procurement Director Gus Lopez, asking him whether the city's TPC was asked to make or had made any formal recommendation on the issue of Impark's performance. He stated, "No. We

take our guidance and direction from elected officials. ... We don't take any direction from the Transportation & Parking Committee." He said that if the TPC adopted a formal position on such a matter, it would then be forwarded to the city manager who, in turn, could then notify elected leaders. He said he believed Morgan "took it upon himself" to conduct the review of Impark's performance and to subsequently share his findings with Comm. Libbin. He also advised that while Standard was not represented at a recent pre-proposal meeting concerning the parking RFP, Pintado was present and did actively participate in the Q&A session between prospective vendors and city officials. He said Pintado signed the attendance log as a representative of VIP's Parking Systems, which is one of Pintado's companies. He said Pintado asked questions about pricing guidelines for the RFP. Lopez said the deadline for submittals was extended from July 8 to July 15, and a recommendation would be presented to commissioners in September.

On July 13, COE interviewed Alan Fishman, vice chairman of the TPC. Fishman said he chaired the body for all of 2008 and until early 2009. He said he attended all meetings during that time. He said he could unequivocally state that J.P. Morgan was not authorized by the TPC to conduct a review of Impark's performance, nor was he authorized to contact elected officials with his findings. "He certainly didn't do it because the City of Miami Beach Transportation and Parking Committee asked him to do it. That's for sure." He said any communication between Morgan and Comm.

Libbin would have been in Morgan's capacity as a private citizen, not a city official. He went on to describe Morgan as "a gadfly," and said Morgan regularly reports to TPC members what he considers to be irregular activity. He said the TPC is an advisory body and that any formal recommendation to elected officials would be made in the form of a resolution, which Claudia Wong of the clerk's office would then submit to the city manager's office for distribution to elected officials. He said it would not be appropriate, in his view, for a member of the TPC to approach an elected official without the approval of the TPC. He said the TPC never held deliberations about Impark's performance – at least not "in the Sunshine" – and that, "We never asked him to do this. ... He did this on his own as a citizen."

On July 29, COE interviewed Comm. Libbin and Libbin advised that since taking office in 2005, he has frequently clashed with Comm. Wolfson. He said that he firmly believes the 2008 contract award to Impark was "rigged" against Standard Parking, the incumbent vendor, and that the selection panel was stacked with political operatives. He said he felt the process was especially unfair to Frank Pintado, whom he said acted as an unpaid advisor during his election campaign, referring to him as something of "a coach" for local politics. He said he first met Pintado in 2000 when he served on the evaluation committee that awarded the parking contract to Standard. He said he still speaks to Pintado on a regular basis and estimated he may have spoken to him three or four times during the first

quarter of 2009 – at or about the time he put the item on the agenda to terminate Impark's contract. He claimed that at no time, before or since, has he spoken to Pintado about Impark's job performance or the agenda item. He declined to say what he and Pintado would have been speaking about during those occasions. He also declined to provide a copy of his cellular phone records. He expressed that he thought COE was wasting its time with the investigation, especially since Standard was not among the firms interested in the city's latest RFP for parking operators. He claimed to be unaware that Pintado remained an interested party and had attended a recent pre-proposal meeting held by the city. Libbin said his interest in Impark's job performance was sparked by a recent disclosure concerning the company's failure to require its employees to take CPR training. He said he was upset to learn that city staff had waived that requirement without first consulting the commission. He said that, as a result, he made a public records request to the city clerk's office for copies of all communication between staff and Impark. He said he was further upset because he felt the documents subsequently provided by the clerk's office were not responsive. It was at about this time, he said, that "along came J.P. Morgan." He said that Morgan delivered a copy of a bound report to his office, complete with tabs and dividers, that contained 25 alleged "deficiencies" in Impark's performance since taking over as the city's parking operator. He said he received the document from Morgan unsolicited and that it arrived the day before his agenda item was originally scheduled to be heard. He said that it

was subsequently postponed on two occasions before being heard on March 18 – the date he received the e-mail from Pintado. Libbin said that after reviewing the document, he decided to contact Morgan and request a meeting for “educational” purposes. He said that some time prior to March 18, Morgan came to his house to go over the document. He said he felt that Morgan was very much in support of his item seeking to terminate Impark’s contract with the city, though he claimed he did not feel like he was being lobbied. He said he figured Morgan decided to approach him with the material because, as a member of the TPC, Morgan would be aware that he voted against awarding the contract to Impark in 2008. He said Morgan never stated in what capacity he was acting when he came to his home to review the materials in the report. He said he assumed Morgan was acting in a “journalistic capacity,” as the editor of Citydebate.com. He said the meeting lasted only half an hour because “it was already late in the day.” He said that while he did suspect Morgan had “a dog in the fight,” he said that at no point did he suspect Morgan was there on behalf of Pintado or any other third-party. He said he assumed Morgan simply wanted to undo what they both considered to be a politically tainted contract. Libbin went on to say he had no idea why Morgan asked Pintado to send him the e-mail on March 18. He said his assistant did print it out and bring it to him on the dais, but that he does not believe he carefully read it. He said he did not refer to the document during the meeting, referring instead to the binder that Morgan had previously delivered to his office. Libbin said he had no

idea why Morgan would have presumed he could "script" his remarks, as Morgan admitted he had attempted to do during a COE interview. He said that he did not feel Morgan was trying to lobby him on behalf of any outside interest, though he understood Morgan had a like-minded point of view.

On Aug. 13, COE visited Comm. Libbin's office at Miami Beach City Hall and picked up his copy of the report provided by J.P. Morgan. Libbin asked that said document be returned to him at the conclusion of the investigation. He provided COE with copies of e-mails showing Parking Director Saul Frances expressed a satisfactory opinion of Impark's job performance when contacted by Coral Gables city officials. He said he felt it was inappropriate for city staff to voice such opinions without seeking authorization first.

On Aug. 26, COE interviewed David Hoyt, VP and Florida regional manager for Standard Parking. Mr. Hoyt said he has been working for Standard Parking overseeing the Miami Beach contract since 2003, and works more closely with Pintado than any other company official. He said Pintado is not and has never been an employee of Standard Parking, but rather a partner through a joint venture with VIP's Parking Service. He said Standard made

a business decision not to participate in the latest RFP after "being dragged through the mud" as a result of past controversies. He said the company did not want the bad publicity that was almost certain to accompany any continued pursuit of the contract. Hoyt said Standard does have a meter collections agreement with the city in another joint venture with Pintado in which Pintado has no operational role but participates in the profits or losses. He said Pintado mainly serves in an advisory role and helps with marketing. Hoyt stated that he does not recall if he ever met J.P. Morgan, but does subscribe to Citydebate.com. He said he could unequivocally say that Standard has never paid Morgan in connection with the city of Miami Beach parking contract or any other venture. He said he does not believe Pintado has ever paid him, but can not say for sure. He said he is not aware of any improper lobbying by Pintado or Morgan on Standard's behalf. He said he believes Pintado to be "on the up and up" and that he remains a partner in good standing. He said the company has enjoyed its relationship with the city of Miami Beach, but feels the environment is "too political" at present. He said that, with respect to Standard's protest following the 2008 RFP selection process, the letter was drafted by lobbyist-attorneys George Lopez and Pablo Acosta. He said he was not aware of any verbatim reprint of said letter on Citydebate.com. He said he would look for a copy.

On Sept. 9, 2006, COE took a sworn statement from Frank Pintado that Mr. Pintado provided voluntarily. Pintado advised that he had no involvement in

preparing the document attached to the March 18 e-mail that he admitted sending to Comm. Libbin. He said he sent the e-mail at the request of J.P. Morgan. He said that on or about March 17, Morgan approached him during a chance encounter at David's Café while he was drinking coffee and asked him to review a file on a CD-ROM. He said later that day he did review the information on the CD-ROM and spoke with Morgan later that evening. He said he observed the document consisted mostly of information concerning the job performance of Impark. He said he indicated to Morgan that he felt there was nothing unusual about the kind of deficiencies Impark had been cited for in internal e-mails among the city's parking staff. He said the citizen complaints about rudeness were unavoidable "because we're all human beings." He said he felt the allegations were "no big deal." Pintado said that the following morning, Morgan called and asked him to forward a copy of the document to Comm. Libbin. He said he made no effort to conceal his involvement by using his personal e-mail and that he didn't think he was doing anything improper. He said he did not consider that he or Morgan might be accused of lobbying. He said he understood that Morgan was acting as a "newspaperman." He said that at no point has he or anybody at Standard Parking ever paid Morgan, directly or indirectly. He said he may have spoken to Comm. Libbin at or about the time his item to terminate the city's contract with Impark was pending, but that he never discussed the matter with Libbin. He said he had no interest in pursuing the contract at that time. He did allow he attended a recent pre-proposal meeting and that he had spoken to at least a couple of the prospective respondents, including Laz Parking and Impark.

He said executives at those companies wanted to pick his brain and that he dispensed advice, but added he did not intend to participate as a partner in any business ventures with those or other companies. He said he did not want to jeopardize his long-standing partnership with Standard, which includes contracts in Miami Beach and elsewhere. He said he was still angry about the political process that led to Standard losing its contract in 2008, but said he considered that "water under the bridge." He said he could not say with any precision how much income he lost as a result of Standard losing the contract, but estimated it was between \$20,000 and \$30,000 a year. He estimated that Standard may have earned roughly twice that amount. He complained that operating expenses were high and that the contract was not as lucrative as people believe. Lastly, he denied using any alias e-mails to influence the 2008 RFP process.

On or about Sept. 10, 2009, COE contacted the offices of LAZ Parking in order to verify whether Pintado had spoken to General Manager Luis Macedo or some other company official. Jason Gordon, a lawyer for LAZ, informed COE that he would be "astounded" if Macedo or LAZ "would have anything to do with [Pintado]." He said he would contact his client, nonetheless, and convey the request for information from COE as to the nature of the conversation with Pintado and whether Pintado proposed a joint venture with LAZ.

On or about Sept. 11, 2009, COE contacted Microsoft, the company that owns the e-mail server hotmail to inquire about subpoena procedures, and was

advised that it would be possible to trace the identity of the holder of an e-mail account by contacting the company's "administrative subpoena team." Pintado had claimed he had nothing to do with the e-mails sent under the alias of Lance Armstrong through m.d.a.d2006@hotmail.com.

Discussion and Analysis: The first question that should be answered is whether, in and of itself, the act of forwarding an attachment to an elected official – as Pintado admittedly did – could constitute a violation of the city's lobbyist rules. In Sec. 2-481 of the Miami Beach City Code, lobbyist are defined as "all persons employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any commissioner/ city manager/ any city board or committee ... during the time period of the entire decision-making process on such action, decision or recommendation that foreseeably will be heard or reviewed by the city commission, or a city board or committee."

It can not be disputed that the purpose of the attachment to the March 18, 2009, e-mail was to support the resolution of Comm. Libbin (R9E) and encourage the city commission to abort Impark's contract with the city in favor of issuing a new RFP for parking operations. It cannot be disputed that the timing of the e-mail coincided with the decision-making process. The author of the e-mail attachment, J.P. Morgan, readily admits that his intention was to assist Comm. Libbin in achieving the stated objective of his resolution by "scripting" his remarks for the

meeting that day and providing him with talking points as to why Impark should be terminated as the city's parking vendor. (This is, after all, what registered lobbyists frequently do in their meetings with elected officials.)

Morgan further admits that he provided Pintado with a copy of this document because he wanted Pintado's input and to ensure the accuracy of his report criticizing Impark. He said that Pintado did in fact provide such input during a subsequent conversation. Mr. Pintado also admits to having reviewed the document and to having provided his input, though he claims he disagreed with Morgan's premise that Impark had incurred in gross malfeasance in its management of the city's parking facilities. It should be noted that Morgan, during his interview, made no such mention of any qualitative feedback from Pintado. He merely said that Pintado found his findings to be accurate.

At a minimum, it can be established that Mr. Pintado a.) had knowledge of the contents of the attached document, b.) understood that they were intended to influence an official action by the city commission, i.e. to terminate Impark's contract and issue a new RFP, and c.) communicated with Comm. Libbin via e-mail on the day his item appeared on the commission agenda.

An argument could be made that Pintado was, in fact, lobbying Comm. Libbin by providing him with information that could be presented on the dais to strip a contract from a business rival. Pintado, after all, was part of a joint venture with

Chicago-based Standard Parking that held the city's parking contract for nearly a decade. Furthermore, Pintado told COE investigators he remained angry about the circumstances under which he and Standard lost the contract to Impark. Pintado has acknowledged, moreover, that he remains active in the RFP process to replace Impark, though he denies he had been seeking to serve as a joint-venture partner. To suggest that Pintado had no interest in the matter and was merely serving as an impartial messenger by forwarding the attachment at the behest of Morgan strains one's credulity. It can not be argued, convincingly, that Pintado did not have a dog in this fight. While both Morgan and Comm. Libbin have claimed this to be the case by noting that Standard did not intend to participate in the new RFP – remember Morgan telling COE about a “bombshell” and asking investigators for confidentiality? – this claim rings hollow when considering that Pintado attended the city's pre-proposal meeting for the RFP, was an active participant (asking questions about price structure, etc.) and has been known to have contacted at least two other prospective vendors in connection with the RFP. (LAZ and Impark have confirmed this.)

For Pintado to liken himself to a postman simply delivering a letter, in this instance, is difficult to accept at face value. After all, do mail carriers read the letters before putting them in a mail box? Are these mail carriers asked to provide input and guidance from the senders before they are delivered? Of course not. These actions would get a mail carrier fired. It was clearly not the intention of Mr. Morgan to have a document delivered by an independent third-party. He asked

Pintado to forward the e-mail at a critical moment in the decision-making process after soliciting and receiving Pintado's counsel and input on the matter. Pintado, as president of VIP's Parking Systems Inc., is a long-time city vendor and was a prospective participant in any subsequent parking RFP.

The credibility of the parties involved should also be considered. A previous ethics case (K07-124) showed that Frank Pintado did use a fictitious e-mail account in the name of George Wallace to circulate a false and misleading political poll prior to a city election. Pintado attempted to mislead CEO investigators by telling them he did not know anything about the origins of the poll or who was circulating it to local media and activists. Investigators later traced the poll to an e-mail account that had been opened by Pintado himself. The present investigation has also yielded evidence of false and misleading statements by Morgan, as well as possible acts of subterfuge.

That Morgan recanted his initial account of the preparation of the attached document to the March 18 e-mail is highly curious. During an interview with COE investigators on June 30, Morgan said he did not write the introductory remarks to the effect that "we should all be insulted" about the Feb. 27 letter from Impark GM Escobar. He suggested alterations had been made to the document and that they had been "cut and pasted." He later told an investigator that in fact he had written the remark, and that the copy of the document shown to him by COE at the interview was identical to the document he prepared "right down to the

commas.” Similarly, Morgan claimed during the interview he had never seen the Feb. 27 letter from Impark’s Escobar – even though the attached document to the March 18 e-mail was clearly a response to said letter and referenced excerpts lifted verbatim from the letter. When later asked about this, Morgan alleged that the letter from Impark had been “forged” and was manufactured in order to unjustly implicate him in connection with this case. COE asked the director of the city’s Parking Department to verify the authenticity of the letter in question and, in response, he confirmed it matched the letter in his file.

Neither Morgan nor Pintado dispute that they have a long-standing friendship, nor that they speak to one and other on a regular basis. It may not be possible – absent a careful examination of financial records – to prove the existence of a financial arrangement between Pintado and Morgan to lobby city officials, i.e. that he was “employed or retained.” However, there is evidence of a symbiotic relationship between the two, as political allies. A review of articles posted on Mr. Morgan’s blog Citydebate.com shows that Pintado has been able to publicize his charitable works on behalf of UNIDAD and Standard Parking. A review of articles concerning the city’s parking contracts shows articles in Citydabate.com are closely aligned with the views and interests of Pintado and Standard Parking.

In fact, the city’s procurement director, Gus Lopez, told COE he believes that one such article published under Mr. Morgan’s byline (April 5, 2008) and titled “The \$716,089 Questions [sic] About our taxpayer’s [sic] monies” was a verbatim

reprint of Standard's letter of protest to the city in early 2008. Mr. Lopez further told COE that he believed Morgan had attempted to lobby him on behalf of Standard on his cellular phone and at Transportation & Parking Committee meetings he attended at the city of Miami Beach Convention Center.

Conclusion and recommendation: Given the intrigue and subterfuge that has become commonplace in Miami Beach politics it would seem naïve to accept at face value the simplistic explanation that Mr. Pintado was merely acting as an uninterested third-party in relaying the e-mail attachment to Comm. Libbin on the morning his agenda item was to come before the city commission. It seems that, at a minimum, probable cause exists to submit the matter before the Ethics Commission for deliberation and review, at least as it relates to Pintado. It also seem further scrutiny might be called for in examining the relationship between Pintado and Morgan, who claimed to be acting in his capacity as an independent "journalist" and not as an agent of Pintado or Standard Parking. In another context, his actions – in meeting with Comm. Libbin to discuss the Impark situation and in scripting remarks for him – could be viewed as lobbying. What remains to be established is whether Mr. Morgan has been somehow retained by Pintado. The only practical way to verify this – absent a voluntary admission from either party – would be to conduct a review of their financial records.