

Biscayne Building
19 West Flagler Street
Suite 220
Miami, Florida 33130
Phone: (305) 579-2594
Fax: (305) 579-2656

Miami-Dade County Commission on Ethics and Public Trust

Memo

To: Mike Murawski, independent ethics advocate
From: Karl Ross, investigator
Date: Oct. 29, 2009
Re: K09-086 Gomez Barker Assoc.

Background:

At the request of County Commissioner Katy Sorenson, an investigation was opened to determine the facts and circumstances surrounding Fausto Gomez, a principal for the lobbying firm of Gomez Barker Associates Inc., and his compliance with Miami-Dade County Ordinance No. 00-64 regarding potential conflicts of interest. That ordinance states that no County lobbyist “shall represent any entity in any forum to support a position in opposition to a position of the County unless the Board grants a specific waiver...” The ordinance requires, furthermore, that such a waiver be obtained “prior to representing the adverse interest or position.” According to the ordinance, failure to do so “shall result in either or both” of the following: (1) the lobbyist’s contract becomes voidable by the County, (2) the lobbyist can be banned from representing the County for up to three years.

The investigation further sought to determine whether Mr. Gomez may have violated the terms of his contract, as expressed in Appendix A, in which it is noted that: “Not every County interest can be anticipated or enumerated in the County’s legislative package, and issues arise and change over the course of the legislative process. It is incumbent on each Consultant and employees, partners, and subcontractors to remain mindful of the County’s policy and fiscal interests and positions vis-à-vis other clients. If an actual or perceived conflict arises, the Consultant and/ or subcontractor

must advise the County Manager and the Office of Intergovernmental Affairs (OIA) immediately in writing and seek a waiver of the conflict before the Board of County Commissioners (BCC).” The BCC would then have, among other options, the authority to void the contract with the lobbying firm and/or its subcontractor.

The issue, as it relates to Mr. Gomez, is whether he should have sought a waiver from the County’s Office of Intergovernmental Affairs (OIA) in a timely manner as it related to his involvement in an amendment to Senate Bill 1000 during the Spring 2009 legislative session in Tallahassee. The intent of that bill – introduced on behalf of the Palm Beach County firefighters union – was to allow Palm Beach and other counties to levy a 1 percent sales tax for fire rescue services through a public referendum. A similar bill had been introduced in 2008 and did not gain passage.

The amendment in question was introduced by Sen. Mike Fasano on April 28, and served to “carve out” Miami-Dade County from SB 1000, thereby preventing the County from seeking a surtax to fund fire rescue services.¹ Such services are presently funded by property or ad valorem taxes. The amendment was adopted and the bill was passed two days later. It was subsequently signed into law by Gov. Charlie Crist. It presently excludes Miami-Dade County from seeking additional resources to bolster fire rescue services through a voter-approved sales tax.

When SB 1000 was in committee during the early part of 2009, it began to sound alarm bells throughout the local fire rescue community and was widely viewed as a threat to the independence and existence of municipal fire departments. Among the issues this investigation attempts to address are: Whether the position Mr. Gomez’s municipal clients directed him to take with regard to SB1000 could be considered “adverse” to Miami-Dade County’s position on the bill? And if so, is this something Mr. Gomez should have brought to the attention of the County pursuant to County ordinance 00-64 and/ or pursuant to the terms of his contract?

Legislative history of SB 1000:

Jan. 27, 2009 – The bill is filed by Sen. Mike Fasano, R-New Port Richey, on behalf of the Palm Beach County firefighters union. (He introduced a similar bill in 2008.)

Feb. 5, 2009 – The committee review process begins as SB 1000 is referred to the following committees: Community Affairs, Military Affairs and Domestic Security, Judiciary, Finance and Tax, Policy & Steering Committee on Ways and Means.

April 27, 2009 – Senate Pro Tempore Mike Fasano files the amendment to SB 1000.

April 28, 2009 – During open session, Sen. Mike Fasano introduces the amendment to SB 1000 that effectively restricts Miami-Dade County from seeking voter approval to levy a sales tax funding fire rescue services. The amendment is adopted.

¹ Specifically, the amendment stated: “(a) The governing authority of a county, other than a county that has imposed two separate discretionary surtaxes without expiration, may, by ordinance, levy a discretionary sales surtax of up to 1 percent for...”

April 29, 2009 – The Senate passes SB 1000 by a 39-0 vote.

April 30, 2009 – The House adopts the Senate version (SB 1000), as amended, and the bill passes 110 to 8. The House version was HB 365.

June 16, 2009 – SB 1000 is signed into law by Gov. Crist.

Other key dates:

May 9, 2000 – The Miami-Dade County Commission adopts Ordinance No. 00-64, requiring contract lobbyists to seek a conflict-of-interest waiver prior to supporting a position contrary to the County's interests on behalf of another client.

Nov. 1, 2006 – The County enters into a contract for state governmental representation and consulting services (lobbying) with the Tallahassee-based firm of Rutledge, Ecenia, Purnell & Hoffman. Gomez Barker Assoc. is a sub-consultant.

April 27, 2009 – The County's fire rescue union (Local 1403) writes a letter to Florida Sen. President Jeff Atwater voicing concerns about the amendment to SB 1000, stating: "We oppose any attempts to remove Miami-Dade County from this legislation." (The union learned about the planned amendment the night before.)

April 28, 2009 – Assistant County Attorney Jess McCarty meets with Gomez at the State Capitol Building to alert him to the County's opposition to the amendment to SB 1000. Gomez advised he would immediately stop working on the amendment.

April 29, 2009 – ACA McCarty sends an e-mail to Gomez to memorialize their meeting and to request a formal letter from Gomez regarding his representation of municipal clients in connection with the fire rescue surtax issue. McCarty asks for the letter by the close of business that day, if possible.

April 29, 2009 – Gomez responds to the e-mail from McCarty, advising that: "This will confirm that upon your first advising me that Miami-Dade County has established a position on the subject legislation and/or amendment, my team and I immediately ceased any and all activity on that matter."

May 6, 2009 – Gomez sends a formal letter to OIA Director Joe Rasco reiterating that his team "ceased all activity" with respect to SB 1000 after being contacted by ACA McCarty on April 28. He stated this was the first time he had been made aware the County had taken a position on the bill and apologized for any "misunderstanding."

June 30, 2009 – The Miami-Dade County Commission, by a 9-1 vote, adopted a resolution granting a retroactive conflict waiver to Gomez Barker Associates. (A subsequent motion for reconsideration failed.)

The Investigation:

As historical background, our investigation found that in recent years, a rift has grown between the County's fire rescue department and those of the five municipalities that provide their own fire rescue services. Gomez Barker Associates represents three of those five municipalities – Key Biscayne, Coral Gables and Miami Beach. The other two are Miami and Hialeah. Leaders of the five municipal departments have become distrustful of the County and its fire rescue department – including its union leadership – because of recent legislative attempts to impose a consolidation of fire rescue services countywide. Such a merger would effectively eliminate the fire rescue departments in the five municipalities as independent entities.

Representatives of these municipal departments consider such attempts to force a merger or consolidation as being tantamount to “a takeover” by the County. It was in this context that questions were raised about SB 1000 and whether it would effectively lead to a consolidation of fire rescue services by siphoning resources from the municipalities to a central funding authority controlled by the County.

Representatives of Key Biscayne, Coral Gables and Miami Beach were contacted and copies of any e-mails, reports or other communications between Mr. Gomez and their respective staffs regarding SB 1000 were requested pursuant to F.S. 119.

For Key Biscayne, the response items included e-mails dating back to March 25, 2009. In this March 25, 2009 e-mail, Gomez wrote that “the five Fire Chiefs of their respective cities” [must] forge a “unified position” with respect to SB 1000 and its House companion bill, HB365. In this e-mail Gomez warns, “These are the bills that promote consolidation of fire services and would charge city residents a surtax.” He further suggests that the five chiefs have an “emergency meeting.” In a March 27 e-mail, Gomez advised officials in Key Biscayne, Coral Gables and Miami Beach that the House version of the bill would be coming before a committee chaired by Rep. Juan Carlos Planas, R-Miami, and that Luis Garcia, D-Miami, would be serving as the ranking minority member. He urged the five chiefs to attend along with their union representatives, stating: “This is where we make our stand!” On April 8, Gomez sent an e-mail to municipal officials with an update on proposed amendments to SB 1000 by Sen. Fasano, the bill's sponsor. Lastly, on April 13, Gomez sent an e-mail to municipal officials advising them as follows: “The top brass from the Miami-Dade Fire Union are all in Tallahassee lobbying for the Surtax legislation. Please pass this along to your Fire Chiefs in Miami and Hialeah.”

In response to the records request, Key Biscayne also provided a copy of an Aug. 31, 2009, legislative report to the city's elected officials recounting his firm's actions with respect to “bills of specific interest to Key Biscayne.” In this section, he includes an item about the fire rescue surtax, stating that local elected leaders – including Sen. Alex Diaz de la Portilla, Rep. Luis Garcia and Rep. Eric Fresen – “excluded

Miami-Dade and its cities by securing approval of an amendment exempting any county that had two non-expiring surtaxes.” He further credited Key Biscayne Village Manager Chip Iglesias and Village Fire Chief John Gilbert with “making this happen.”

For Coral Gables, the response items included the same e-mail on March 25, warning of “bills that promote consolidation of fire services” and that “a unified position must be forged.” The same e-mail on April 8 about the proposed amendments to SB 1000 was included. Also included was an e-mail dated April 13 in which Gomez tells Gables Fire Chief Walter Reed he had just received a call from a lobbyist on behalf of the Miami-Dade firefighters union and that union leaders wanted to know “what our objections are.” He told Reed that fire chiefs in Miami and Hialeah should get their lobbyists involved too. An April 28 e-mail from Reed to Coral Gables Assistant City Manager Maria Jimenez and copied to Gomez includes a note advising that the Florida Professional Firefighters association was “actively trying to include Miami-Dade County in the legislation.” Reed said he would forward the message from the association to Gomez “for his review.” The COE records request also included a May 27, 2009, legislative report from Gomez to Coral Gables officials that includes an item on the fire rescue surtax that is nearly identical to the one on the Key Biscayne report dated Aug. 31, 2009. The only difference is that this item does not credit Coral Gables’ city manager and fire chief with promoting the amendment. The report still credits the three legislators named above.

For Miami Beach, the response items consisted of four e-mail exchanges with Gomez, beginning on March 25, 2009. That e-mail prompted a response from Kevin Crowder, the intergovernmental affairs liaison for Miami Beach, who stated he was glad to see SB 1000 contained “no specific ‘consolidation’ language” as a bill filed the previous year had. He went on to state he felt the bill could represent “double taxation” for Miami Beach residents and noted, “I think there is ultimately too much distrust of the intention of the counties to garner municipal support.” He goes on to tell Gomez in a follow-up e-mail on March 26 to “oppose the bill.” Gomez sent an e-mail to Crowder and others on March 27 regarding the upcoming committee meeting, adding: “This is where we make our stand!” On April 7, Crowder sent Gomez an e-mail suggesting language for a proposed amendment that would exclude Miami-Dade County from SB 1000, borrowing “some CRA amendments” – from 2002 – “that were written so that they did not apply in Miami-Dade County.” (Note: This seems to indicate that Gomez was involved in efforts to craft an amendment that would specifically exclude Miami-Dade from SB 1000.) Gomez thanked Crowder for his input. On April 13, Gomez sent Crowder and other municipal officials an e-mail advising them that: “The top brass from the Miami-Dade Fire Union are all in Tallahassee lobbying for the Surtax legislation.”

COE also obtained a copy of Contract No. Q75b between Miami-Dade County and Rutledge, Ecenia, Purnell & Hoffman P.A., the prime contractor, for governmental representation and consulting services not to exceed \$75,000 per year. On page 14 of the 28-page document, Art. 20 (Subcontractual Relations), the contract clearly states that: “If the Contractor will cause any part of this Agreement to be performed

by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects ..." On Page 1 of Appendix A, under the heading "Scope of Services," the contract provides that the Consultant "shall abide" by all conflict-of-interest rules, including the Ordinance No. 00-64.

COE also obtained a copy of SB 1000 and the amendment introduced by Sen. Fasano that served to exclude Miami-Dade County. The amendment, introduced at 3:56 p.m. on April 28, moved to insert the following language into the bill: "(a) The governing authority of a county, other than a county that has imposed two separate discretionary surtaxes without expiration, may, by ordinance, levy a discretionary sales surtax of up to 1 percent for ..." Because Miami-Dade already has two permanent ("without expiration") surtaxes for Jackson Health System and the half-penny transit tax, the County is essentially "carved out" of the bill. Sources indicated that only one other Florida county would be similarly affected.

Interviews:

The following are summaries of the relevant portions of interviews conducted by COE throughout the course of this investigation:

On Aug. 27, COE interviewed Assistant County Attorney Jess McCarty, who stated that he learned of the amendment to SB 1000 on April 28 – the day it was introduced by Sen. Fasano and adopted by the Florida Senate. He said he learned about it from Stan Hills, president of Metro Dade Fire Fighters IAFF Local 1403, and another union representative. He said Hills asked him, "Have you seen the amendment that Fausto's running to SB 1000?" McCarty said that he immediately contacted Gomez and arranged to meet him on the third floor of the state Capitol building. He said Gomez did not dispute his involvement with the amendment, but stated he didn't realize the County had taken a position and was unaware of any conflict. McCarty said Gomez told him, "I'm off it" and that he would have no further involvement with the legislation. McCarty said that, in his view, this did not mitigate Gomez's actions up until that point because: "By then, the missiles had been launched." McCarty noted that County staff decided not to oppose the passage of SB 1000 at that point, because it was too close to the end of the session and other matters were assigned higher priority. He said he believes the amendment to SB 1000 was inserted on behalf of the five Miami-Dade municipalities with independent fire rescue agencies.

On Aug. 28, COE interviewed Stan Hills of Metro Dade Firefighters IAFF Local 1403, who corroborated the account provided by ACA McCarty. He said he and other union representatives had been monitoring SB 1000 as it advanced through the legislature, "then at the last minute the County was carved out of it." He said the union supported the bill because it would provide another mechanism for funding fire rescue services in an uncertain fiscal climate. He said he believes municipal fire departments opposed the bill "for turf reasons," among them Gomez's clients in Key Biscayne,

Coral Gables and Miami Beach. He said he learned about the amendment on the evening of April 26 – the day before it was filed – and that Gomez was involved. He said he notified ACA McCarty but by the time they realized what had happened it was too late to prevent the bill from going forward. Hills said he hopes the County makes it a priority to have the language removed in the next legislative session. Hills said he later learned that Key Biscayne City Manager Genaro “Chip” Iglesias – himself a former firefighter – had been working with Gomez, and that Iglesias directed Gomez to oppose the legislation, as originally drafted, “because it was bad for Key Biscayne.” Hills called the amendment “an 11th-hour attack.” He said it should have been obvious to Gomez that the amendment was detrimental to the County. “By the time we scrambled and got ourselves together we realized it was too late,” Hills said. “Fausto did a great job. Unfortunately, he [shafted] us in the process.”

On Aug. 28, COE interviewed Greg Giordano, chief aide to Sen. Mike Fasano, who advised that he was involved with seeking the passage of SB 1000 and any related amendments. He said Fasano sponsored the bill on behalf of the Palm Beach County firefighters union and that their main lobbyist was Sebastian Aleksander. He said Fasano introduced a similar bill in 2008 that failed to gain approval. He said the amendment in question was adopted on April 28, but that he had no specific recollection as to whether Mr. Gomez promoted the amendment. “Sitting here several months later, I can’t recall whether Fausto came into my office and asked me to file this amendment. He very well may have. But I handled more than 70 bills that session and I can’t remember everything that happened.”

On Sept. 1, COE interviewed Sebastian Aleksander, a principal for the Aleksander Group. He said he worked to promote SB 1000 along with “a whole team” of other lobbyists and interested parties. He said he could not recall who introduced the amendment to eliminate Miami-Dade County from the bill. He said he could not recall what role, if any, Gomez played in seeking the amendment in question.

On Sept. 8, COE interviewed Genaro “Chip” Iglesias, village manager for Key Biscayne. He said it was his view and the view held by Village officials that SB 1000, in its original form, was a potential vehicle for diverting resources to the County and away from local fire rescue service providers such as Key Biscayne. He said this issue had become increasingly political in recent years, noting several attempts to force a merger between the County and municipal service providers. He cited a failed attempt by County Commissioner Bruno Barreiro to consolidate fire rescue services countywide through an amendment to the County’s home-rule charter.

On Sept. 11, COE interviewed Pat Gosney, chief legislative assistant to state Sen. Alex Diaz de la Portilla (DDL). She said she did not have any specific recollection about how the amendment to SB 1000 was passed and whether Sen. DDL was involved. She said she would report back with any findings to the contrary.

On Sept. 11, COE interviewed state Rep. Eric Fresen, who recalled voting in favor of the legislation (HB365). He said a member of the Miami-Dade firefighters local did

raise concerns about the County being “carved out” of the bill. He said he consulted Senate staff and was told this was being done to improve the odds of getting the bill passed since Miami-Dade already had a high sales tax rate. He said he regarded it as a Palm Beach County bill and saw no reason to oppose it. With respect to the Gomez Barker report that credited him and other local officials with securing the amendment, Fresen said he disagreed: “From my perspective, that’s not something that I worked on.” He said he did not know why the reported stated otherwise.

On Sept. 11, COE interviewed state Rep. Lopez-Cantera, the House majority whip, who advised that – contrary to the Gomez Barker report – he had no involvement with the amendment in question. He said he voted against the House version of the bill (HB365) because he thought it could lead to higher taxes. He noted, “The amendment was adopted in the Senate where I have absolutely no control ... I’m going to have a talk with [Gomez] because I had nothing to do with the amendment.” He stated further that he believed the report to officials in Key Biscayne and Coral Gables was misleading, and later that day issued a memorandum to Key Biscayne Village Manager Iglesias stating his office “had no involvement in drafting any fire rescue surtax amendment,” adding: “Any report to the contrary is erroneous.”

On Sept. 11, COE interviewed state Rep. Luis Garcia, who said he actively opposed the original version of SB 1000 because it would have enabled the County’s fire rescue department to “muscle in” and “eliminate” municipal fire departments such as the ones in his district (Key Biscayne, Coral Gables, Miami, Miami Beach). Garcia said he was fire chief in Miami Beach before seeking elected office and understands the consolidation issue well. He said he met with Gomez about SB 1000 and told him he wanted to find a way to exclude Miami-Dade County from the bill. “I thought it would be bad for the smaller departments ... I wanted to deter the merger between the County and the smaller fire departments because I thought it would make those departments disappear. I definitely told [Gomez] that I wanted that bill to exclude Miami-Dade because I wanted to protect my cities, my taxpayers, my constituents.”

On Sept. 14, COE interviewed lobbyist Ron Book and his associate, Rana Brown. Book was interviewed because Gomez’s e-mail to ACA McCarty on April 29 and subsequent letter to OIA Director Rasco stated that “another member of Miami-Dade’s lobbying team” also lobbied on behalf of municipal clients and in opposition to the County’s interests with respect to SB 1000. Book advised that he understood Gomez was referring to him in his communication with County staff and vehemently denied any involvement with the amendment to SB 1000. He said he learned about the amendment the day it was filed and immediately realized it would have an “adverse impact” on the County and promptly notified ACA McCarty. “There is no way you can read this amendment or run this amendment and not know that it would have an adverse effect on the County,” Book said. He said he had spoken to Gomez about the matter and instructed him to “cease and desist” from making any statement or representation that his firm supported the amendment. He said that to have done so would have been contrary to the language in the County’s lobbying contract and would have been a breach of professional ethics. “It was Fausto doing what Fausto

always likes to do, which is point the finger at someone other than himself when in fact he should be pointing the finger at himself,” Book said. Ms. Brown concurred with the account provided by Mr. Book with respect to the amendment.

On Sept. 30, COE interviewed Miami Beach City Manager Jorge Gonzalez who stated that the City was opposed to the original version of SB 1000. He said it was viewed as something that could deprive the city’s fire rescue department of resources, especially since Miami Beach has a “huge” tourism economy and that surtax revenues from visitors would likely be redistributed elsewhere. He said the City did instruct Gomez to seek ways to protect the City’s interests on this matter.

On Oct. 24, COE interviewed Joe Rasco, director of the Office of Inter-governmental Affairs (OIA). Mr. Rasco said he and ACA McCarty discussed SB 1000 once or twice during the session, but that McCarty did not regard the bill, in its original draft form, as a priority item. He said that changed once the amendment was filed seeking to exclude Miami-Dade County from the bill. This “significantly changed the outlook of the bill, whereas if everybody else was getting the benefit of the bill, why weren’t we also getting the benefit?” He said the consolidation of fire services countywide has been “a huge hot-button issue,” noting that a hearing before the Board of County Commissioners prior to the introduction of SB 1000 galvanized considerable protest from the municipal fire departments and their respective unions. Rasco said that Gomez should have been able “to spot the potential for conflict” posed by the amendment to SB 1000 and should have alerted the County accordingly. He stated that his failure to do so would seem to constitute a violation of the contract language as it pertains to the contract language in Appendix A. He said that, without the benefit of an investigation such as the one carried out by COE, it is difficult if not impossible to know whether the County’s contract lobbyists are strictly adhering to the contract terms and are faithfully looking out for the County’s interests.

On Oct. 20, COE interviewed Mr. Gomez, who was represented by attorney Ben Kuehne, with respect to SB 1000 and Mr. Gomez’s obligations pursuant to the terms of Contract No. Q75B for professional representation in Tallahassee. Gomez began by stating that he felt he had not incurred in a conflict of interests and that, furthermore, he did not request such a waiver from the BCC. He said the request for a waiver was submitted by BCC Chairman Dennis Moss and not by himself or his firm, Gomez Barker Associates. He said he appeared before the BCC to answer questions about the waiver because he values his firm’s relationship with County, which it has represented at the state level for the past 10 years or longer. He reiterated that, in his view, “there is no conflict,” adding that the County neglected to adopt a position with respect to the fire rescue surtax issue during either the 2008 or 2009 legislative sessions. He noted that he was openly and actively working on behalf of his municipal clients to oppose the legislation and that at no time did any County representative voice concerns – until the day the amendment to SB 1000 was adopted on April 28, 2009. He said that at the time he was contacted by ACA McCarty and made aware that the County had developed a position with respect to the amendment, he immediately agreed to cease and desist from efforts to promote

the amendment in question. He stated he feels that by refraining from taking any further action to promote the amendment at that time that he was complying with the terms of his contractual obligation and in compliance with County policy.

Mr. Gomez went on to state that the County's legislative package is developed by a process in which lobbyists meet with departmental directors and the OIA submits a draft package to the BCC for approval. He said this package can subsequently be amended at the request of individual commissioners if such requests are ratified and adopted by the BCC in full. He said that, absent BCC action and approval, a County position can not be credibly established. He and his attorney, Mr. Kuehne, raised questions as to whether County staff, including members of the OIA, are authorized to interpret these legislative priorities and to modify any formal positions. Mr. Gomez underscored that no position was ever adopted in 2008 or 2009 with respect to a fire rescue surtax such as the one encapsulated in SB 1000. "The fire rescue tax never came up," Gomez said. "It was not on the list of priorities ... because basically it was a non-issue at the time."

Mr. Gomez said that, in addition to Miami-Dade County, his firm represents more than 30 governmental and private clients. He said his municipal clients – among them Key Biscayne, Coral Gables and Miami Beach – were opposed to SB 1000 and had directed him to oppose the legislation. He said their opposition was rooted in the concern about another sales tax being levied against residents at a time when County residents and visitors are already heavily taxed. He disputed the view that his clients were opposed to SB 1000 because of its potential impact on their respective fire rescue departments. He claimed the opposition was driven purely by economic concerns and not by concerns about a possible merger or takeover of municipal fire rescue services. He said he therefore did not interpret the issue, with respect to SB 1000, as being one that could have a potential adverse effect on the County. He and his attorney further noted the County had not adopted a formal position in support of consolidating fire rescue services and that he therefore saw no conflict.

With respect to the amendment process, Mr. Gomez noted that he spoke to a number of lawmakers and their staffers during the legislative session. He said these included state representatives Ed Hooper (House sponsor of the bill), Luis Garcia, Juan Carlos Planas, Eddie Gonzalez. He said he also met with the chief aide to Sen. Mike Fasano (the Senate sponsor), but not with Sen. Fasano himself. Gomez said he voiced his opposition to SB 1000 in its entirety and sought to "kill the bill" outright. He said that while he would have favored this course of action, he did discuss other ways to limit the perceived exposure of his municipal clients – namely, by having the County exempted or excluded from the legislation itself through an amendment. He said he did advocate on behalf of such an amendment and that, ultimately, one of the lawmakers or their staff members sought such an amendment through the Bill Drafting Office serving both the Florida Senate and House of Representatives. He said he did not know which lawmaker requested the amendment in question and emphasized he did not provide the specific language or a draft thereof. He said he did not learn that the amendment had been drafted until the day it was filed.

Mr. Gomez defended his actions by saying that he did not know the form and substance of the amendment until after it was written. He said he believed it would have been premature and unnecessary to contact OIA prior to that since he had been openly and actively seeking to defeat SB 1000 for the past two years. He asked whether the reaction from County officials would have been the same had he succeeded in having the legislation killed outright and without amendment. When it was noted that much of the concern among County officials had to do with the wording of the amendment – which acted to isolate and exclude Miami-Dade County – Gomez argued that this was immaterial as the effect would have been the same either way. His attorney suggested that there was no permanent damage to the County because the County could eliminate one of the two non-expiring sales taxes presently in effect. “If this was of some import to the County you would think the County would have developed a position” by that time, Gomez said.

Mr. Gomez further contended that two other County lobbyists – Ron Book and Gary Rutledge (the prime contractor for Gomez Barker) – were aware of the amendment and failed to alert the County as to its existence. (Note: This point is controverted by Mr. Book.) He said it was therefore evident that these three members of the County’s lobbyist team, including himself, “had no inkling that the County had a position” for or against SB 1000 and the subsequent amendment. His attorney further suggested that there exists a “disconnect” between the County’s policy makers and the staff members interpreting and enforcing the conflict of interest rules, and that said rules should be refined to more clearly identify the County’s legislative interests.

(Note: Mr. Gomez was provided an opportunity to review the summary of his interview provided above and to note any objections. He and his attorney were given a full week to respond and to voice objections. No objections were noted.)

Discussion and Analysis: Mr. Gomez maintains that he did not incur in a violation of the conflict of interest provisions of his contract or those codified by resolution No. 00-64. He argues that since the County did not adopt a formal position with respect to the fire rescue surtax or consolidation of fire rescue services countywide, that he was at liberty to promote the interests of his municipal clients. The investigation yielded no evidence that the County had adopted a formal position relating to SB 1000 until at or about the time the amendment was filed on April 27.

In that regard, Mr. Gomez could be correct in stating that he did not violate the terms of resolution No. 00-64, which states that no County lobbyists “shall represent any entity in any forum to support a position in opposition to a position of the county unless this Board grants a specific waiver for a specific lobbying activity.” There is no evidence that Mr. Gomez or any of his associates acted to promote the amendment in question after he was contacted by ACA McCarty and informed that the County had developed a position with respect to the amendment to SB 1000.

As it relates to compliance with the terms of Gomez's lobbying agreement, a review of the e-mail correspondences between Gomez and municipal officials show repeated references to the consolidation issue in which there exists an adversarial position pitting the interests of the municipalities against those of the County. For instance, in his March 25 e-mail to officials in Coral Gables, Key Biscayne and Miami Beach, Mr. Gomez states: "We need direction on the proposed fire legislation (SB 1000 and HB 365). These are the bills that promote consolidation of fire services and would charge city residents a surtax." In the e-mail, Gomez goes on to suggest fire chiefs in those cities and the two others with independent fire rescue departments have an "emergency meeting" and that "a unified position be forged."

The agreement in Appendix A states that, "If an actual or perceived conflict arises, the Consultant and/ or Subcontractor must advise the County Manager and the Office of Intergovernmental Affairs immediately in writing and seek a waiver of the conflict before the Board of County Commissioners." It was the opinion of OIA Director Joe Rasco, as stated in his interview, that Gomez should have been able to identify that consolidation is "a huge hot-button" issue and that Gomez should have recognized the potential for conflict. He said the fact that the amendment included language that served to exclude Miami-Dade County "significantly changed the outlook of the bill," and should have caused Gomez to contact OIA and seek a waiver at that time. Mr. Gomez contends that this change was immaterial as it accomplished the same purpose as if the bill had been defeated in its entirety.

Mr. Gomez has stated that he was unaware of the specifics of the amendment, with its exclusionary language, until on or about the time it was filed on April 27. He did tell investigators that he discussed this option with elected officials and that these talks led to the request of such an amendment from the Bill Drafting Office. Mr. Gomez maintains that during this time the County had not taken a position on SB1000.

However, in an e-mail Mr. Gomez received on April 7, three weeks prior to the time the amendment was introduced by Sen. Fasano, Kevin Crowder of Miami Beach wrote: "Fausto, in 2002, there were some CRA amendments that were written so that they did not apply to Miami-Dade County." Crowder went on to provide Mr. Gomez sample language for excluding the County from the taxing authority that SB 1000 contemplated granting to Miami-Dade and other Florida counties.

Lastly, Mr. Gomez contended that other County lobbyists failed to alert the County as to the potentially adverse position represented by the amendment to SB 1000 and that he is therefore being unfairly singled out. He specifically mentioned his prime lobbyist, Gary Rutledge, and fellow lobbyist Ron Book, who was acting under a separate but similar agreement. It should be noted that Rutledge is based in Tallahassee and that Gomez Barker was added to the team of Rutledge, Ecenia, Purnell & Hoffman presumably because of its intimate knowledge of local affairs. It would therefore be incumbent on Mr. Gomez to alert his colleague and principal of any potentially adverse legislation. Mr. Book, for his part, advised that he did contact the County upon learning of the amendment to SB 1000. "There is no way you can

read this amendment or run this amendment and not know that it would have an adverse effect on the County,” Book said. He said he immediately notified ACA McCarty with respect to the amendment. McCarty confirmed that he did in fact receive a phone call from Book alerting him to the amendment and its impact.

The terms of the lobbying agreement state that Mr. Gomez should have notified the County “if an actual or perceived conflict arises” – even if it not a part of the County’s formal lobbying package. Many of those interviewed, including OIA Director Rasco and ACA McCarty, believed that Gomez should have notified the County as to the existence of the amendment to SB 1000 as it “significantly changed the outlook of the bill” and put Miami-Dade at a disadvantage relative to other Florida counties.

In our view, the larger question is: Should Mr. Gomez have notified the County immediately upon receiving instructions from his municipal clients to “kill,” defeat or otherwise deter the passage of SB1000? As initially proposed, SB1000 would have permitted the County to levy a discretionary sales tax. Any position in opposition to that could be considered adverse to the County’s interest or position. Mr. Gomez’s defense is that the County never adopted a position with regard to SB1000 until after he had already lobbied Senator Fasano’s office and those of other lawmakers.

Mr. Gomez told COE that he did not feel it would be appropriate to “interject my personal opinion” with respect to SB 1000 and the related amendment. However, the lobbyist agreement in Appendix A requires him to do just that and exercise his professional judgment, thereby alerting the County if any adverse consequences could potentially arise from actions he was taking on behalf of other clients – in this case the cities of Key Biscayne, Coral Gables and Miami Beach.