



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

CASE

Case K16-009	Case Name: Miami-Dade County Contract Lobbyist Review	Date Open:	CLOSED
Complainant(s):	Subject(s): Miami-Dade Contract Lobbyists	Feb. 18, 2016	Date: 11/10/16

Predication:

By a 2010 Board of County Commissioners (BCC) resolution, the Commission on Ethics and Public Trust (COE) is tasked with undertaking an annual "conflict check" of all contract lobbyists representing Miami-Dade County before state, local and federal lawmakers.

The purpose of this review is to ensure that "all County contract lobbyists obtain a waiver from the Board for any actual or perceived conflicts of interest" and comply with their "continuing, affirmative duty during the term of the lobbying contract ... to promptly seek in writing and obtain a waiver from the Board for any conflict of interest prior to representing any entity in any forum."

During the course of this review, it was learned that several lobbyists were simultaneously representing Miami-Dade County (the County) and the Miami-Dade Expressway Authority (MDX), including lobbyists from Gomez Barker Assoc.

The County Attorney's Office (CAO) had designated Gomez Barker to represent the County on transportation issues during the most recent legislative session. It was further learned the CAO had removed Gomez Barker and assigned another firm to represent the County on transportation issues once this potential conflict became known to the County's legal team.

The County's transportation bills (House Bill 1377 and Senate Bill 1372) failed as a result of subsequent concerns over the content of the legislation after it was submitted.

The focus of this COE review became whether Gomez Barker, led by lobbyist and principal Fausto Gomez, failed to disclose a potential conflict between its representation of MDX, and its representation of the County with respect to transportation legislation submitted in the County's name during the period leading up to the 2016 legislative session.

MDX was created by County ordinance, but is a state entity and not subject to County oversight or control. Its board members do not answer to the BCC, and its operations are financed by the collection of tolls on local expressways. MDX's legislative priorities are developed by its own board of directors and staff, as was the case with bills promoted by its chief lobbyist Fausto Gomez this past legislative session.

On Feb. 18, COE reviewed copies of the 2016 legislative updates filed by the County's six lobbyist firms assigned to represent the County before members of the state legislature and their staff in Tallahassee. The firms are as follows: Becker & Poliakoff, Poole McKinley, Rutledge Ecenia, Ronald Book P.A., Gomez Barker Associates, and Akerman LLP.

A subsequent review of records on file with the state Lobbyist Registration Office indicated that 20 lobbyists from these firms are registered to represent Miami-Dade County. They are identified as: Mario Bailey, Jose Bermudez, Ronald Book, Rana Brown, Jonathan Costello, Angela Dempsey, Fred Dickinson, Diana Ferguson, Bernie Friedman, Fausto Gomez, Jasmyne Henderson, Yolanda Cash Jackson, Kelly Mallette, Jess McCarty, Will McKinley, Richard Pinsky, Sean Pittman, Manuel Reyes, Gary Rutledge, and Sophia Smith.

The registered client list of each of these lobbyists was examined, revealing several potential conflicts as a number of these lobbyists represent other counties and cities and governmental agencies that may be vying for the same funding sources or grants. In particular, several County lobbyists also were found to have represented MDX (Bermudez, Gomez, Cash Jackson, and Reyes) pursuant to a separate agreement with that entity during the same legislative session. Of these, Gomez and Reyes became the focal point because their firm (Gomez Barker) was assigned to handle the County's proposed transportation funding legislation.

Relevant Ordinances:

By County resolution No. 1236-99, the Board has established that "no County contract lobbyist or subconsultant shall represent any client and/or issue that may be adverse to the County without first requesting and obtaining permission from the County."

Miami-Dade County Ordinance No. 00-64, regarding potential conflicts of interest, 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.

Investigation:

Interviews:

On April 4, COE met with Assistant County Attorney Jess McCarty to discuss any potential conflicts that he may have become aware of during the previous legislative session – ending on or about March 11. He advised that Pittman Law’s request for a waiver on Feb. 2, 2016, was denied by the BCC after Pittman agreed to represent Uber Technologies on a state legislative issue contrary to the County’s position on this same issue.

McCarty said the issue with Uber was handled appropriately. Pittman voluntarily disclosed to McCarty its potential conflict. Once the issue was examined by COE, it was determined that a conflict did in fact exist. To wit, the County opposed legislation (HB 509 and SB 1118) that Uber was supporting and that would limit the County’s ability to regulate or ban Transportation Network Entities (TNEs) such as Uber from competing with taxis. He noted that Pittman ceased to represent Miami-Dade County after the determination that there was a conflict..

With respect to any other potential conflicts, COE inquired about several of the lobbyists representing MDX, Gomez and Reyes among them, which seemed to be competing with the County for upwards of \$30 million a year in transportation funding. It was noted that one of the legislative reports filed by lobbyist Ronald Book highlighted an alleged “drafting error” that would transfer funding – if successfully obtained from the Florida Department of Transportation (FDOT) – to MDX instead of to the County, the intended recipient.

Book’s report indicated his firm would seek to “fix” this drafting error. McCarty indicated the County had proposed language to obtain funding for transportation projects to the sponsors of SB 1372 and HB 1377, Sen. Anitere Flores, R-Miami, and Rep. Jeannette Nunez, R-Miami. Book further noted that bills sponsored by these lawmakers “were erroneously drafted to direct funding and oversight on each of these County priorities, to MDX. The County Position is that the County is the proper entity, as MDX is not a taxing authority ...”

The projects included funding for the creation of Transportation Investment Areas (TIAs), or special taxing districts for development adjacent to Metrorail stops; development of a light rail line along the existing corridor created by State Road 836, also known as the CSX east-west corridor; and the collection of express lane revenue for express bus service along I-95’s north-south corridors. These two proposals were championed by, among others, Commissioner Esteban Bovo, who at the time chaired the BCC’s transportation committee.

The total amount of state funding at stake approached \$1 billion since the requested funding of \$30 million annually from FDOT would stretch over 30 years, and be supplemented by an additional \$70 million in start-up funds during that period. Funding from the creation of TIAs could create an estimated \$1.5 billion over this same period through TIF funding.

Other proposed funding sources were to include 25 percent of revenues from the issuance of drivers’ licenses to County residents, as well as 15 percent of proceeds from the use of HOV

lanes to be earmarked for enhanced mass-transit bus service along those same corridors. These proposals were developed by Commissioners Xavier Suarez and Daniella Levine-Cava.

During the initial meeting, McCarty indicated that, once he became aware of potential conflict involving Gomez Barker, a decision was made to replace the firm during the 2016 legislative session. He said this transportation issue was reassigned to Ronald Book P.A. He said he saw no need to re-assign other County lobbyists with a similar potential conflict – Yolanda Cash Jackson and Jose Bermudez – since they were not working on this transportation issue.

Based on the above discussion, COE requested correspondences, draft language for legislation, and other records that would assist in understanding how it is that legislation proposed to benefit the County and its residents would be revised to favor MDX for funding. McCarty indicated that he asked Fausto Gomez, to look into the matter and Gomez reported back that the lawmakers simply exercised their prerogative. McCarty said he ultimately decided to “pull him [Gomez] off this” item, noting that: “At a minimum, it had the appearance of a conflict, I thought ... it was more of a precautionary matter.”

McCarty indicated neither of the purported County bills passed in their respective bodies, and that the legislation died on the grounds of “germanity,” i.e., the legislation, as amended, exceeded the scope of the original legislation. He said it is unclear whether FDOT awarded the funding to other jurisdictions or whether the funds remain unspent.

April 18, 2016

In a follow-up conversation, McCarty advised he assigned the transportation items to Gomez Barker sometime in October 2015. He said he sent him an email to this effect. He said nothing got filed until January 2016 – roughly two and a half months later. He said he became concerned about the lack of action, given the importance of the issues and the need to file a bill prior to the commencement of the legislative session. He said many bills go to committee prior to the beginning of the session and that this increases the chances of success. He said that committees only run through the end of the sixth week of the session, which last for 60 days – from about January 10 through March 10th, so the timely filing of the bills is crucial.

McCarty said he would get verbal assurances from Gomez that he was working toward finding sponsors and getting the bills filed, however, he added: “There were not a lot of updates.” He said he eventually began setting conference calls with Gomez and his “prime,” Gary Rutledge, to make sure that everything was still moving forward. He said Joe Rasco, the County’s director of Intergovernmental Affairs (OIG), participated in some of these calls along with other ACAs working on the legislation. The process “was taking longer than I thought it should.”

On May 20, 2016, McCarty was re-contacted by COE and further information was requested. He advised that Gomez Barker was one of three subcontractors on a County lobbying contract (governmental representation) held by the prime, Rutledge Ecencia & Purnell. He said the contract is worth as much as \$120,000 annually, and that he estimated Gomez Barker would receive no more than one quarter of the total amount or about \$24,000 to \$30,000.

McCarty noted that, with respect to the failed legislation, the House and Senate bills “never made it out of committee,” adding that it took too long for the bills to get filed in the first place. “This is an issue where we would have had to have been running on all cylinders to get something passed” ... He added that typically he would have liked for at least one of the bills to have gone through committee prior to the start of the legislative session in January, but that that didn’t happen. “My frustration was that it didn’t seem to be moving,”

Bernardo Escobar
Legislative Affairs
Miami-Dade Expressway Authority
April 14, 2016

In response to questions raised about the role of Gomez Barker, Mr. Escobar said he did not feel that there was any conflict between the legislation sought by MDX and that sought by the County. He said that: “We are a County agency. We don’t work against the County. We work *for* the County.” He further noted that the Metropolitan Planning Organization (MPO), whose board members are mostly appointed by the BCC, had asked MDX to “expand its mission” and take a more active role in developing transit alternatives like rail and mass transit.

Escobar said that MDX submitted proposed legislation in response to the County’s stated transit goals and was not attempting to work at cross-purposes with the County. He said MDX did identify a number of potential funding sources including the \$60 million annual source that FDOT sets aside for high-speed rail projects. He noted that since FDOT is not actively promoting high-speed rail, this money is just lying around and could be “tapped” for other projects, such as those described in recent legislation. He said the monies – about \$30 million a year for capital projects (50% of total outlays) and another \$10 million for start-up costs – could be re-allocated for traditional transit projects such as light rail and roadways.

Escobar said the Miami-Dade Delegation – led by Rep. Jose Felix Diaz, District 116 – had been asking for input for a countywide transportation bill and that, in his view, the County had been slow to respond for this request for proposed projects. He said MDX presented its legislation to lawmakers and that the final versions of the bills were the work of the House and Senate Drafting Offices. He said that MDX didn’t care whether MDX was the recipient of the funding, adding that, at present, MDX lacks the statutory authority to carry out rail and mass-transit projects, especially those requiring use of eminent domain. He said that MDX does have certain assets, namely 50 acres of land it owns along the State Road 836 corridor.

Escobar said the initial 11-page version of HB 1377 was very well received and enjoyed broad support among local lawmakers. He said that the County’s 48-page “strike all” amendment late in the process effectively killed the proposed legislation. He said the County amendment was too long and raised too many questions for lawmakers. He further observed that by proposing TIF funding similar to that employed by CRAs, this raised thorny questions since CRAs themselves had recently come under scrutiny for their spending practices.

Escobar described MDX as an “executory agency,” saying it could build and deliver any sort of project, if authorized. He underscored that it is not a planning agency and said this is left to

other bodies such as the MPO, which has 13 of its 20 or so members appointed by the BCC. (He said that the mayors of all cities of more than 50,000 residents also appoint members.) He said state Rep. Kionne McGee and County Commissioner Dennis Moss also welcomed MDX's involvement in overseeing transit projects and wanted it to take a more active role.

With respect to Fausto Gomez, Escobar said: "He is our lobbyist in the state legislature ... our main lobbyist." He said he works "very closely" with Gomez to lobby on behalf of MDX.

Escobar noted some commonalities between the County's proposed TIF funding and MDX's Transportation Reinvestment Zones or TRZs. He said Commissioner Bovo, however, has been a vocal critic of MDX's proposed involvement in mass transit projects. He said Bovo's transit plan – calling for the acquisition of the CSX corridor properties – is similar to the old "Joe Martinez Plan," named after the former BCC chairman. He said that CSX wanted too much money for the sale of its corridor, which includes a southern leg, and not just an east-west right of way. He said the plan was cost prohibitive and unrealistic, in his opinion.

Escobar said he feels MDX is the "ugly stepchild" among local agencies, but said its intentions were simply to help identify projects and funding and not to become involved in a power play. He said that egos and pride of authorship led to the recent legislative setbacks.

Ronald Book, lobbyist

Ronald L. Book P.A.

April 14, 2016

Mr. Book stated that he felt Gomez had a very obvious conflict and should have disclosed as much to the County Attorney's Office *prior to* accepting the assignment last fall. He said Gomez was tasked with finding a sponsor for the transit legislation and then "did nothing and sits on it," noting that it "wound up as an MDX bill and not a County bill."

Book said he heard that Gomez was allegedly working against the County's bill after he was re-assigned, though he said he has no direct information to that effect. He said his colleague, Rana Brown, may have additional information but was not available at the moment.

Book said he was told by ACA McCarty that Gomez was not responsive to the County's needs and waited too long to submit proposals on behalf of the County. He said it would be worth talking to the sponsors of the bill in the House and Senate and their staffs.

He said that Sen. Flores was especially upset because the bill she sponsored for the County was killed by the County itself, which submitted the lengthy amendment ("strike language") in order to scuttle the legislation because it didn't want MDX to get the funding. He also suggested that Commissioner Jose "Pepe" Diaz was unhappy about the handling of the issue.

Alex Alamo, legislative aide
Office of Rep. Jeannette Nunez (District 119)
2450 SW 137th Ave., Miami
April 26, 2016

Mr. Alamo was interviewed at Rep. Nunez's district office at the address shown above. He advised he received a copy of the draft legislation that later became HB 1377 from Will McCrae, an aide to Sen. Anitere Flores. He said he received an email from McCrae on Nov. 17, 2015, and that he did not re-examine the legislation until after the holidays. He said the document provided by Sen. Flores was the basis of the House companion bill.

Alamo said he did not recall actively working on the bill until a day or so before it was filed with the House bill drafting office on Jan. 11, 2016. He said he later worked on the bill with Jess McCarty of the County Attorney's office and lobbyist Rana Brown. He said he did not have any interaction with Fausto Gomez on the legislation, though he later discovered an email dated Jan. 7, 2016, with one of Gomez's partners, Reyes. "I didn't look at it closely until about the time of the (filing) deadline," he said about the bill, titled An Act Relating to Expressway Authorities. "I guess you could say it got lost in the holiday shuffle."

Alamo said it was not unusual for bills to originate in the Senate because Senators can file an unlimited number of bills, while House members are limited to just six bills per session. He said that by the time he received the draft bill, it was pretty much what he would consider an MDX bill, but that it wasn't until the County filed its lengthy amendment that the bill changed course. He said that because of the lengthy County amendment and issues about TIF funding, the bill died for lack of "germanity." He said the amendment "needed more explanation."

With respect to Mr. Gomez, he said Gomez did meet with him to discuss a separate bill (HB 299) that served to restructure MDX's governing board. He said he did not meet with Gomez to discuss any issues relating to the County's transportation projects or priorities.

Will McCrae, legislative aide
Office of Sen. Anitere Flores (District 37)
10691 N. Kendall Drive
May 6, 2016

Mr. McCrae provided copies of the requested correspondences relating to SB 1372 on May 6, including an email from Gomez Barker lobbyist Manny Reyes dated Nov. 16, 2015.

The email references an attachment characterized as "our draft proposal of the comprehensive transportation plan for Miami Dade County that Fausto discussed in concept with you a few weeks back ... The bill provides Miami-Dade County with the option to use MDX and its transportation infrastructure expertise as the implementing agency for its transportation plan and identifies the funding sources for expressway, rail and other transportation projects."

It should be noted these funding sources would include an annual \$30 million appropriation from FDOT and that the proposed legislation provided by Gomez Barker "directs" FDOT to

allocate the funds to MDX for a 30-year period ending in FY 2046-47.

The proposed bill submitted by Gomez Barker further requests that MDX's name be changed to the Miami-Dade Transportation Authority, thereby expressing "the legislative intent for MDX to broaden its mission and powers to facilitate multimodal transportation infrastructure for the county, and re-designates MDX as the Miami-Dade Transportation Authority."

At present, MDX is only responsible for overseeing the development of expressways and not multimodal transportation systems such as light rail or other mass transit.

Javier Rodriguez, executive director
Miami-Dade Expressway Authority
May 12, 2016

Mr. Rodriguez appeared at COE for a statement along with his legislative affairs advisor, Bernardo Escobar. Escobar had requested a meeting with COE Executive Director Joseph Centorino regarding the ongoing inquiry into possible conflicts of interest.

They advised that Gomez was a long-time lobbyist for MDX, and that his firm was paid \$10,000 monthly under an agreement worth \$120,000 a year. He said Gomez Barker was the prime, and that one sub was also retained under the agreement (Becker Poliakoff).

Rodriguez stated that MDX was aware Gomez also represented Miami-Dade County, and that he did not feel this was not a major concern. He said that from time to time, MDX board members would question Gomez about any potential conflicts with MDX concerns. He said Gomez would respond by telling them that if any conflicts were to arise he would disclose the conflict and take the necessary measures to eliminate said conflict.

Rodriguez and Escobar further advised they felt MDX did not have any significant conflicts with the County because MDX is not a policy-setting body, and cannot oversee or initiate any new transportation projects without the advice and consent of the County. Rodriguez stated, with respect to any potential conflict involving Gomez during the past legislative session, that "Nobody at MDX instructed Fausto to work against the County's interests."

Asked whether MDX was involved with preparing the draft legislation submitted to Sen. Flores' office on behalf of Miami-Dade County in November 2015, Rodriguez confirmed that MDX did help prepare the MDX sections of her legislation. He said he considered this a major piece of MDX legislation, something the authority had been working on for months.

Rodriguez said he even met with Miami-Dade County Mayor Carlos Gimenez, and suggested that Gimenez introduce the MDX legislation on behalf of the County. He said that Gimenez supported some of the proposals, such as dedicating 15 percent of the "managed lanes" proceeds to mass-transit projects, but felt it was not politically advantageous to promote legislation involving MDX since in the mayor's view the authority was "toxic." He said that reference to toxicity was a result of recent toll increases that had led to public backlash.

Rodriguez and Escobar advised the MDX legislation was promoted in response to requests from the Miami-Dade Delegation and lawmakers such as state Rep. Kionne McGhee, District 117, who wanted MDX to oversee the development of new rail projects. They noted that, at present, MDX is limited to expressway projects and tolling as a source of revenue, but that the proposed legislation would have expanded MDX's mission to include "multi-modal" projects, such as light rail lines, as well as provided significant non-toll revenue sources for the construction and operation of mass transit projects.

Rodriguez and Escobar stated they were frustrated by the County's "strike-all" amendment to the MDX (County) legislation, tacked on to the bill at the last minute and which effectively killed the measure. They criticized the County's handling of its legislative agenda, saying County lobbyists and legal advisors should have been more proactive in finding legislative support for its proposals to get them to committee sooner. They said they could not explain why Gomez did not submit a bill more responsive to the County's interests.

They said Mr. Gomez never discussed with them any potential conflict between MDX's bill and the County's legislative package. Rodriguez said he met with several Miami-Dade County Commissioners in Tallahassee during session and they were supportive of MDX's proposals. He said a few of the Commissioners later commented that Commissioner Bovo might not be happy with the legislation, adding that competing "egos" were to blame for the subsequent failure of the MDX legislation to make it through committee and to the floor for a vote. The MDX officials said that they were unaware the County was promoting its own transportation legislation with similar proposals.

Alex Annunziato, legislative director
Office of Commissioner Esteban Bovo, Jr. District 13

May 13, 2016

Mr. Annunziato stated he is an attorney and that he drafted the County's transportation bill on behalf of Commissioner Bovo, who chairs the BCC's Transit and Mobility Services Committee.

Annunziato stated he worked on the County's draft legislation to create Transportation Investment Areas (TIAs) modeled after existing legislation for CRAs (Chapter 163, state statutes), and using tax-increment funding (TIF). He said he worked closely with McCarty, Brenda Neuman, and Michael Mastrucci of the Miami-Dade County Attorney's Office. The legislation, if approved in its final form, would have created a new chapter, Chapter 350, devoted to TIAs and established rules governing such TIAs. He said the idea was to make this funding mechanism available not just to the County, but to all counties and municipalities. He said that a study done by the CITT showed that TIAs could generate \$50 million a year or more for projects in Miami-Dade County, or roughly \$1.5 billion over 30 years.

Annunziato said the County's proposed legislation clearly established that the BCC would be the "governing board" and, as such, would control how TIA proceeds would be spent. He said he was surprised and dismayed to learn, however, that the proposed legislation under review in

committee granted that authority to MDX. "What [HB 1377] said was that MDX would be given broad authority to create these tax increment zones ... It was completely bizarre and totally contrary to what we were proposing," Annunziato remarked.

He further noted the language submitted by MDX found in HB 1377 only authorized MDX to create the TIAs, and that only then would the County enter into a revenue sharing agreement with MDX. "The difference would be like me having control over my checking account versus how, under the MDX bill, my wife would have control over my checking account."

Annunziato stated the County Attorney's Office was very clear it wanted its draft legislation submitted verbatim to lawmakers, noting he was told Rep. Jose Felix Diaz and Sen. Anitere Flores both agreed to sponsor the legislation. He said he had no idea Gomez had submitted MDX's language to Sen. Flores office on behalf of the County. He said he was not even aware that Gomez was representing MDX until after the problem arose in bill drafting.

Annunziato said that it wasn't until sometime in January that he got a call from ACA McCarty asking him if he had seen the bill. He said McCarty gave him the bill number, and told him to call him back. He said that he was shocked to see that none of the County language had been included in the bill, and wondered "where did all that MDX stuff come from?"

Annunziato stated he asked Gomez for an explanation as to why the County's language had not been included and that Gomez told him: "You need to understand that this was a compromise between competing interests in both chambers, that this bill was the best attempt to reconcile those interests." He said Gomez never disclosed the County's language was never submitted to Sen. Flores' office in the first place and had been supplanted by the MDX draft legislation. He said he sees this as a clear conflict of interest on Gomez's part.

"It's absolutely a conflict," he said. "I'm a lawyer and if I did something like this with two clients who had competing interests, I would be in trouble with the Bar." He further noted, "I didn't find out he was representing MDX until afterwards and that pissed me off."

Annunziato said that, as far as he was aware, Gomez made no effort to address this issue prior to handling the County's transportation legislation and that there was no disclosure about a potential conflict. He said that MDX's legislation, submitted under the guise of the County's transportation plan, would "transform" MDX from an "expressway" authority to a "transportation" authority, and that such an authority would compete with Miami-Dade Transit for ridership and funding. He said the bill would greatly enhance MDX's role in this arena.

"Fausto Gomez never told us how the MDX language got into the County's bill," he said, calling the MDX legislation a "power grab" at the expense of the County.

Annunziato said that as a result of subsequent attempts to revise HB 1377 to reflect the County's legislative priorities and proposals, the bill died as a result of "germanity" and that nothing was passed to provide funding or resources for County transportation projects. "I was heartbroken the bill didn't pass," Annunziato said, noting Commissioner Bovo's term as chairman of the Transit and Mobility Services Committee was about to come to an end.

Rana Brown, lobbyist

Ronald Book P.A.

May 17, 2016

Ms. Brown advised that she was tasked with representing the County on transportation issues after Gomez Barker was re-assigned. She stated that Gomez Barker usually represented the County on such issues because it was thought the firm had expertise in that area.

Brown said that when she became involved in the transportation issue, it was clear the County was not happy with the draft of the legislation pending at that time. She said the bills did not reflect the County's legislative agenda and were more closely aligned with MDX's agenda, with respect to the oversight and development of transportation infrastructure.

Brown said it did not appear to her that the County's interests were being faithfully discharged by the predecessor firm, Gomez Barker, noting that: "The whole reason it was reassigned to us was because [the County's interests] weren't being carried out."

Ms. Brown further reasoned that any break-down likely happened prior to bill drafting, stating that in her experience with bill drafting, the staff did not seek to radically alter proposed legislation, but rather served to package the legislation provided by lawmakers.

She further stated that lobbyists "are tools of the County's policy," and are not expected to modify the policy without explicit instruction from County officials.

State Sen. Anitere Flores, R-Miami (District 37)

10691 N. Kendall Drive, Miami, FL

May 18, 2016

Sen. Flores was interviewed at her district office. Also present for the interview was Will McRae, the legislative aide who assisted her in the preparation of SB 1372, which she said was always intended to be the Miami-Dade County Transportation bill.

With respect to the draft legislation provided to her office by Manny Reyes of the lobbyist firm Gomez Barker this past November 16 via email, Sen. Flores advised that she was under the impression that the proposal represented Miami-Dade County's plan, not any plan or proposal intended to serve the interests of the Miami-Dade Expressway Authority.

"I want to be clear: **We never thought that was an MDX bill,**" Sen. Flores stated. She said the only MDX legislation she worked on (SB 299) dealt with governance issues and called for increased ethical standards. She said MDX was not especially supportive of that bill.

With respect to the draft legislation submitted by Reyes calling for amendments to Chapter 348 and related to expressway authorities, Sen. Flores said, "We were under the impression this was the County's transportation bill ..." She said her office did add language reflecting a proposal by County Comm. Suarez to tap the proceeds of automobile registrations to fund

local transportation projects. His proposal was called the “25-5 Plan.”

Her aide, McRae, stated that this language was subsequently provided to the House sponsor of the bill, Rep. Jeanette Nunez. McRae added that there was little time to vet the language and revise the proposal because of the rush to get the legislation to bill drafting and have it sent to committee. He said the backlog on the House side was even more severe.

Sen. Flores stated that she met with Mr. Reyes and Fausto Gomez shortly before her office received the proposed legislation on November 16, and that at no time did either lobbyist advise her that the proposal had anything to do with MDX. She said that, at all times, it was described as the County’s transportation bill, and references were made to Transportation Reinvestment Zones or TRZs as purportedly endorsed by Commissioner Bovo. (Note: The language in the County’s proposed legislation – which was not submitted by Gomez Barker – uses a different terminology, referring to the TIF financing mechanism as Transportation Investment Areas or TIAs, which were to be administered by the County, not MDX.)

Sen. Flores said Reyes and Gomez advised language would be added to the measure to provide the County with as much as \$40 million a year from FDOT’s high speed rail program. The MDX legislation would allocate that funding to an expressway authority, i.e. MDX. She said she even met with FDOT Secretary Jim Boxold to support this funding request.

Sen. Flores said she learned that the legislation was not what the County wanted after the bill had been filed and she received a call from ACA McCarty. “They had concerns about why all the authority was given to MDX ... I said, **That wasn’t my intention. My intention was to do a County transportation bill.**”

Sen. Flores and McRae advised that, because the House companion bill, modeled after her bill, was titled “an act relating to expressway authorities,” it was impossible to amend it to include the County’s transportation initiatives after the fact because this raised “germanity” issues, meaning that the proposed amendments were seen as incompatible with the original bill. The County’s lengthy amendment led to the original legislation’s demise, they said.

They advised the House companion bill (HB 1377) was withdrawn after it was learned that House Democrats intended to kill the measure on the grounds of germanity. They said that when the House version died, this undermined the Senate version (SB 1372), as well.

Sen. Flores said that after the legislation was reassigned to Book (RLBPA), she worked with Book’s associate Rana Brown to try to find other bills that the County’s transportation proposals could be tacked onto as amendments. She said those efforts failed. She said that by that time it was too late in the session to attempt to introduce new legislation. As a result, the County’s transportation legislation was never introduced as a viable measure.

Joe Rasco, director
Office of Intergovernmental Affairs
May 19, 2016

Mr. Rasco stated he participated in conference calls with Commissioner Bovo's office and the County's lobbyists on the proposed transportation plan. He said "we were on target" with respect to filing legislation in a timely manner, and that "everybody knew what their assignment was." He said that when the bill came out of bill drafting, everybody was surprised with the legislation because "we were expecting something more County-centric." He noted what was filed did not resemble the language with respect to the TIF funding plan supported by Commissioner Bovo, the intended centerpiece of the County's legislative package.

Fausto Gomez, principal/ lobbyist
Gomez Barker Associates
May 19, 2016

On the above date, Mr. Gomez was contacted by this office via email and any work-product relating to his efforts to promote the County's transportation agenda was requested, along with an interview to respond to concerns raised over the course of the investigation. Gomez did not respond until receiving a second email from COE on May 31, at which time he advised that he had retained attorney Ben Kuehne to represent him on this matter. Follow up emails were exchanged with Mr. Kuehne to produce documents and schedule an interview.

Esteban Bovo, Commissioner
Miami-Dade County, FL
June 23, 2016

Commissioner Bovo met with COE to discuss the investigative findings as they relate to the County's proposed transportation legislation. The commissioner advised that he has a long-standing concern about the County's "lobbyist teams" and noted that "we've had issues in the past" with respect to potential conflicts of interest, given the nature of their business with each lobbyist serving multiple clients and special interests at the same time. "We just want to be sure that lobbyists representing the County are doing the County's work," he said.

Bovo said that as chairman of the BCC's transportation committee, recent legislative initiatives – such as that proposed by his committee relating to TIF funding – have become "very, very important" to the County because they seek to create desperately needed funding mechanisms for the development of mass transit infrastructure. "All this talk of transportation is just that unless you have the financing" for infrastructure projects.

Bovo said he was disappointed to learn the County's transportation proposal went off track during the past legislative session, saying: "It went into a totally different direction. It gave all the control to MDX – and that's not what we wanted." He said he thought MDX could provide assistance to the County in obtaining land along the right of ways for transportation corridors, but that he did not envision that MDX would control the funding or oversee the development

of transportation projects. He said this authority was supposed to reside with the Board of County Commissioners or any other municipal governing bodies.

Bovo said he considers himself one of the least supportive commissioners with respect to the proposed expansion of MDX's powers over transportation projects. He said MDX does a good job developing expressways, but that he would not support expanding its powers and was surprised to find language to this effect in the County's proposed legislation.

"Our whole intent was to be able to control [transportation] corridors, so we can lay our various modes of transportation whether it's BRT (bus rapid transit) or rail," he said; further noting that the legislation promoted in the County's name seemed to have the opposite effect. "It clearly took a different texture, and we were no longer in control of the bill."

Benedict Kuehne, attorney for Mr. Gomez
July 12, 2016

Mr. Kuehne called to ask about the nature of the records being requested in connection with the inquiry into a possible conflict of interest by Gomez and his firm. He was briefed about the findings to date, and the strong appearance that MDX legislation was submitted in the name of the County and that his client failed to disclose this to County officials. He said he would discuss this with Gomez and respond to the request for information.

On Aug. 4, Mr. Kuehne sent an email to COE and responded as follows:

"I have spent considerable time looking into this matter. It appears that Fausto Gomez, as requested by his client Miami-Dade County, put together a Comprehensive Transportation [sic] that included all the many and varied priority needs of the County as indicated in its legislative priorities. This proposal was entirely consistent with the directive to him. He sought the input of the County Commissioners interested in Transportation issues. The resulting draft was a comprehensive set of proposals that included the various Commissioners' concerns, as well as overall County priorities. Even Commissioner Bovo's specific item was addressed among the comprehensive provisions.

"The Comprehensive Transportation proposal was advanced by a member of the Miami-Dade Legislative Delegation as being responsive to Miami-Dade County's overall needs. Apparently, even though the Comprehensive Transportation package was consistent with County priorities, Commissioner Bovo took exception to the portion of the package that included his pet item. Commissioner Bovo then engineered for the County to replace Mr. Gomez, a respected transportation-specialist government consultant, with another of the County's consultants who was not known for having a specialty in transportation matters.

"During the Florida legislative process, the substitute County consultant arranged a Strike-All replacement that was deemed NOT GERMANE by the Florida Legislature. The entire bill was thus killed because Commissioner Bovo preferred his pet bill or no bill at all. The end result was that Miami-Dade County did not obtain any of its legislative priorities that session. The adverse impact on County transportation needs was extreme, all apparently the

result of one Commissioner preferring to promote a personal preference over the greater good of the County's needs. The impact of Commissioner Bovo's misconduct cannot be overstated: Miami-Dade County lost [sic] what might have been its very best opportunity to obtain legislative solutions for its many and varied transportation issues.

"Seemingly in order to deflect attention away from his own actions that resulted in none of the County's transportation needs being addressed, Commissioner Bovo sought to blame the failure on Fausto Gomez, an entirely unprofessional and factually unsupported assertion. The ruse did not work.

"Mr. Gomez had worked diligently, in service to Miami-Dade County and its many transportation needs and priorities, to assist the Florida Legislature in crafting a Comprehensive Transportation Bill that had a real chance of success. He advanced the interests of Miami-Dade County in the process. But his efforts were derailed by the concentrated work of a single Commissioner who sought to up-end a comprehensive transportation solution in favor of a single item legislation that was not even identified as a priority matter for the County.

"That Commissioner Bovo has publicly complained about Mr. Gomez and has accused him of being "under investigation" by the Commission on Ethics is apparent evidence of a personal or professional dislike of Mr. Gomez that is totally unwarranted, unjustified, and uncalled for. Fausto Gomez, as a highly skilled, trusted, and effective governmental affairs consultant, worked diligently to serve the needs of the County. He has never been instructed to favor one County Commissioner's requirements over the comprehensive County legislative priorities. In this situation involving the Comprehensive Transportation Bill, the transportation needs of Miami-Dade County would have been well met had he been allowed to continue efforts to advance the Comprehensive Bill. At no time did Mr. Gomez advance other interests above those of Miami-Dade County, and did not favor one client over another. He withheld no information from Miami-Dade County, and was consistent in his proactive approach to advancing comprehensive transportation legislation. "

It should be noted that Commissioner Bovo responded to the allegations contained in this email on Aug. 30, 2016, and expressed his "sincere disappointment and disgust at Mr. Gomez's attack on my character and for his blatant misrepresentation of the salient facts at issue in this case." He goes on to assert that the language in the bills introduced by Mr. Gomez on the County's behalf "diverged wildly" from the language in the drafts submitted to the County's lobbying team. He went on to state that, in his view, "the proposal adopted by our commission had been corrupted and I expressed a desire to have the bills amended if at all possible." (A full copy of Commissioner Bovo's response will be included as an exhibit to this report.)

Benedict Kuehne, attorney for Mr. Gomez
Aug. 5, 2016

Mr. Kuehne appeared on behalf of Fausto Gomez; he denied his client had any conflict of interest with respect to his role as a Miami-Dade County contract lobbyist during the past

legislative session. He said that the County's transportation legislation failed due to "miscues" on the part of "various people at the County," singling out lobbyist Ronald Book. Book replaced Gomez after Gomez was removed for a suspected conflict of interest. (COE requested an interview with Gomez, but Gomez did not appear with his attorney as requested.)

Kuehne contended the bills submitted in the County's name – SB 1372 and HB 1377 – were "County favorable" and should have been allowed to continue on through the legislative process. He said a subsequent "strike-all" amendment filed with the assistance of Book all but ruined the County's hopes of obtaining any funding or support for transportation-related projects in 2016. Kuehne noted this included nearly \$1 billion in funding for light rail, which he said could have been used to leverage as much as \$19 million in bond proceeds.

Kuehne stated that, based on his research, he did not feel that any conflict of interest existed for his client because MDX was created by the County and is a County agency. He provided a copy of a 2009 opinion by former County Attorney Robert Cuevas to support this position. The opinion states that MDX "meets the County code definition of a County Board," noting that the County created MDX and partially funded it with a start-up loan of \$450,000. (The opinion also noted that once created, MDX "shall be an agency of the state.")

Kuehne said that MDX is the only authority in the state created by a county commission, and not by state lawmakers. He said the BCC appoints a majority of its members, further emphasizing that MDX is subject to County oversight and control. He reiterated his position that, in his view, no conflict exists between the position of MDX and the County, and said any opinion by the COE to the contrary would be superseded by the 2009 CAO opinion.

Kuehne echoed the position espoused in his Aug. 4, 2016, email that it was Commissioner Bovo, not his client Gomez, who effectively sabotaged the transportation legislation. He said Bovo was allegedly upset his "pet project" was not submitted as a stand-alone bill. He said Bovo's proposal to use TIF funding by amending the CRA statute was "foolish" in the wake of recent scandals surrounding the spending by local CRAs. He said Gomez realized this and sought to find an alternative means for creating a similar funding mechanism.

Kuehne said that Gomez was working to produce a "comprehensive" bill that would help the County achieve all its transportation objections, not a single-item bill such as the one Bovo was proposing. He further stated that Bovo's proposal lacked formal standing since it had not been enacted in the form of a BCC resolution. He said the BCC hired Gomez "for his expertise and savvy" and that Gomez acted in the County's best interests.

Kuehne further maintained that under an unnamed state statute, the County would be ineligible to receive state funding for light rail and other transit projects, saying such funding could only be allocated to an authority such as MDX. COE requested a copy of the alleged statute that would ban the County from receiving state transportation funding. He further advised that the County doesn't have "unfettered authority" to do as it pleases with respect to transportation and added that all major projects must first gain approval from the Metropolitan Planning Organization (MPO), a board that sets countywide transportation policy.

Kuehne further singled out Bovo for the failure of the County's transportation plan to gain

legislative support, saying Bovo's "remarks" to lawmakers during the past legislative session caused the County to lose support for its legislative package. He said it was a huge blunder for the County to file a "strike-out" amendment, and that every legislative aide knows to avoid submitting revisions that would lead to a bill dying for lack of "germanity."

Kuehne added, "Fausto Gomez had nothing to do with the strike-out ... He had nothing to do with the lack of germanity. What he did was 100 percent consistent with BCC policy ..."

Kuehne further criticized Miami-Dade Mayor Carlos Gimenez, saying Gimenez "misspoke" when he told state lawmakers the County's transportation priority was BayLink, a proposed light-rail project connecting Miami and Miami Beach instead of prioritizing other projects and funding mechanisms contained in the County's proposed legislation.

Kuehne reiterated that because of these and other "miscues," the County lost out on the opportunity to leverage billions of dollars' worth of state transportation funding. "We lost an opportunity to have \$19 billion worth of bonding" for transportation projects.

Kuehne provided other documents and records to COE on behalf of his client. These included a Nov. 16, 2015, email from Manny Reyes of Gomez Barker to Sen. Flores and staff with respect to the "Miami-Dade County Transportation Bill." This email purports to contain a "draft proposal of the comprehensive transport plan for Miami Dade County." It is noted that the bill gives the County the "option to use MDX and its transportation infrastructure expertise as the implementing agency for its transportation plan and identifies funding sources for expressway, rail, and other transit projects" as well as other "modifications to MDX ..."

Kuehne did not provide a copy of the "draft proposal" that later became the basis for both SB 1372 and HB 1377, but said he would try to obtain a copy from his client. (He was advised that COE obtained this document independently and that MDX Executive Director Rodriguez identified the "draft proposal" as being the legislation MDX worked on with Gomez.)

Kuehne said he would request a copy of the proposal from his client, as well as a copy of the state statute he said would prevent the County from receiving state transportation funding. COE agreed to provide him with a copy of the opinion about whether it considers MDX to be a state agency as opposed to a County agency. The latter was furnished after the meeting.

Xavier Suarez, county commissioner
Miami-Dade County Board of County Commissioners
Sept. 14, 2016

Commissioner Suarez responded personally to a Sept. 9 email from COE inquiring whether any of the 13 county commissioners met with Mr. Gomez to discuss the county's transportation agenda for the previous legislative session. He stated in a telephone message that he did not remember discussing this matter with Mr. Gomez, but added: "I am concerned about the main issue, which is why lobbyists are able to represent entities competing for the same 80 billion in state money."

He noted that, according to his calendar, he may have had lunch with Gomez on Feb. 27, 2013, though he could not recall for sure, and that he may also have had dinner with him at his home on Oct. 11, 2013, though he said that was a social gathering and no official business was discussed. He said he may have had lunch with him again on or about Aug. 4, 2015.

It should be noted that none of the other Miami-Dade County commissioners contacted by this agency on or about Sept. 9, 2016, responded that they had directly met with Mr. Gomez to discuss the County's transportation plan for the 2016 legislative session.

In a follow up conversation on Sept. 21, Commissioner. Suarez stated that the bills submitted on behalf of the County "were not what we were expecting," and added: "I am not pleased with that legislation, how it came out." He said he has been a vocal critic of MDX, and does not feel MDX should have any need to retain lobbyists. He said he would be interested in knowing how the County's legislation came out, in his words, as such a "hodgepodge."

With respect to his "25-five Plan" to use motor vehicle registration proceeds to fund local transit projects, Suarez said the decision of Sen. Flores to include this in her proposed transportation bill was a result of his direct interaction with her and other members of the Miami-Dade legislative delegation. He said this was not due to the efforts of Mr. Gomez or any other lobbyist. He said he personally made a presentation to the delegation.

Document/Audio/Video Review:

A review of all relevant emails, in chronological order, yielded the following:

- Oct. 6, 2015, email from ACA McCarty to MDC lobbyists Fausto Gomez and Manny Reyes references an attachment with "draft language" for the County's mass transit legislation relying on TIF funding. The email identifies this legislation as being a "preliminary priority" as established by the BCC, and directs Gomez and Reyes to "get this language into House and Senate bill drafting as soon as possible." (Note: The attached legislation is titled the "Transportation Reinvestment Act," and relates to Chapter 163, Florida Statutes, and adopts terms similar to those used by CRAs.)
- Nov. 16, 2015, Manny Reyes of Gomez Barker Associates sends an email to the office of Sen. Flores stating: "Attached, please find our draft proposal of the comprehensive transportation plan for Miami Dade County that Fausto discussed in concept with you a few weeks back ... The bill provides Miami-Dade County with the option to use MDX and its transportation infrastructure expertise as the implementing agency for its transportation plan and identifies the funding sources for expressway, rail, and other transit projects. The bill also includes modifications to MDX taken from your Expressway legislation." The latter is a reference to SB 574 and HB 299, which sought to strengthen ethics and financial disclosure requirements for MDX board members.

Note: The attached legislation is titled “an act relating to transportation” and seeks to amend Section 348, Florida Statutes, “The Florida Expressway Authority Act.”

- The Nov. 16, 2015, email from Reyes to Sen. Flores’ office further notes that the draft legislation would “re-designate MDX as the Miami-Dade Transportation Authority,” and “expresses the legislative intent for MDX to broaden its mission and powers to facilitate multimodal infrastructure for the county ...” It further “expands the powers of the authority (MDX) to enter into interlocal agreements with the county or a city within the county to establish a Transportation Reinvestment Zone (TRZ), which is a special district associated with and expressway or rail corridor. It also directs FDOT to “allocate to the Miami-Dade Transportation Authority (MDX) the sum of \$30 million annually from FY 2016-2017 through FY 2046-20147” to fund light rail projects.
- A Nov. 17, 2015, email from William McRae of the office of Sen. Flores transmits the proposed legislation submitted by Gomez Barker in the County’s name to the office of state Rep. Jeanette Nunez, the House sponsor of the companion bill to Sen. Flores transportation bill. Two days later, an aide to Rep. Nunez, Alex Alamo, advises: “We will be filing this as a separate transportation bill.” The significance of this exchange is that it reveals that the Gomez Barker proposal submitted on Nov. 16, 2015, to Sen. Flores – an attachment titled “Miami-Dade County Transportation Bill Final.docx” – was the template for both the House and Senate transportation bills.
- Dec. 10, 2015, email from ACA McCarty to Alex Annunziato, legislative director to Commissioner Bovo, advises that Bovo’s TIF proposal “is going to be part of the transportation package that’s in drafting in both the House and Senate” with Sen. Flores to file a Senate version. It goes on to state: “I spoke with Fausto and he’s going to follow-up with them, because we really need these bills out of Bill Drafting and getting committee references as soon as possible at this point.”
- Jan. 22, 2016, email from ACA McCarty to lobbyists Ron Book, et al., advising that the County’s transportation issues have been re-assigned to Book’s firm. The email states that “our language is not the language that appeared in either SB 1372 or HB 1377,” noting that “the language in those bills puts MDX in charge of the transportation reinvestment zones.” It further notes that the same bills provide “rail funding, but the funding is for MDX not the County.” Lastly, it notes that language in SB 1372 would allocate 15 percent of revenue from express lanes for express bus service, but that “the language in SB 1372 would actually divert revenue that Miami-Dade Transit currently gets under statute to MDX for the private bus concession.” In all instances, MDX would be the recipient of state funding, not the County.
- Jan. 27, 2016, email from Bovo aide Alex Annunziato to Alex Alamo, aide to State Rep. Nunez, the bill’s House sponsor, states that: “... the bill as drafted would authorize *existing highway authorities* to create the TIF district and enter into an

interlocal for capture of the increment funds. Our proposal, the one submitted to your office through our County Attorney's Office, does not vest the authority to create these districts with folks like MDX, but rather authorizes Counties and Cities to implement a 'transportation reinvestment' plan that would permit capture of the increment revenues. ... I did not see this language until the bill was already filed."

A review of key documents relating to SB 1372 and HB 1377 yielded the following:

- On or about Nov. 3, 2015, The Miami-Dade County Attorney's Office provided draft language to lobbyist Fausto Gomez, lobbyist Gary Rutledge (Gomez's prime on the lobbyist representation agreement), and others changing the name of the County's main transportation legislation from the "Transportation Reinvestment Act" to the "Transportation Investment Act," and shifts its focus from amending Chapter 163 to amending Chapter 350 relating to Transportation Investment Areas. Otherwise the legislation is similar in purpose and design and would create a TIF funding mechanism for mass-transit projects to be overseen by a governing body such as the Miami-Dade County Board of County Commissioners, and not a transportation authority.
- On Nov. 16, 2015, lobbyist Manny Reyes of Gomez Barker provided draft legislation to the Office of Sen. Flores described as "[a]n act relating to transportation" and amending Section 348.0002, Florida Statutes. The draft revises the governing structure of "certain expressway authorities" and tightens ethics requirements, as well as "affirming the legislative intent for a certain expressway authority to broaden its mission and powers to facilitate multimodal transportation infrastructure," and further providing that expressway authorities may establish Transportation Reinvestment Zones (TRZ) using TIF funding for transportation projects, as well as authorizing transportation authorities to receive FDOT funding for light rail projects. In other words, the legislation submitted by Gomez Barker would empower MDX to act as a full-fledged transportation agency with powers of eminent domain, bonding authority, and eligibility to receive state funding and taxpayer dollars for transportation projects, and not just for the creation and operation of additional expressways. In fact, the legislation would change MDX's name to the Miami-Dade Transportation Authority and allow this new agency to compete with Miami-Dade Transit for resources.
- On Jan. 6, 2016, Sen. Flores' office introduced SB 1372, which (like the Gomez Barker draft) was titled "an act relating to transportation" and (like the Gomez Barker draft) seeks to amend Sec. 348.0002, Florida Statutes (The Florida Expressway Authority Act) to overhaul the powers of authorities such as MDX to establish TIF-funding mechanisms or TRZs to finance transportation projects, as well as granting such authorities the rights of eminent domain and bonding authority. The bill further allows expressway authorities such as MDX to receive FDOT funding for light rail projects, as well as a portion of funding (15 percent) from the use of express lanes for privately operated bus service. Authorities are currently ineligible for the above.

- On Jan. 11, 2016, Rep. Nunez's office filed companion legislation, (HB 1377) titled "An act relating to expressway authorities," also amending Se. 348.0002 F.S., along the same lines as SB 1372 with respect to establishing TRZs and the allocation of FDOT funding of up to \$40 million annually for the use by authorities such as MDX to develop mass-transit projects other than expressways. The bill would recognize the "broad powers" expressway authorities have over "multimodal transportation infrastructure" – i.e., buses, light rail – to the extent that they could be re-designated as transportation authorities and would no longer be limited to overseeing expressways.

Conclusion(s):

Based on the above, there is ample evidence to conclude that Gomez Barker Associates, one of the County's contract lobbyist firms and the firm assigned to handle County transportation issues, failed to disclose a significant and, as it turned out, costly conflict of interest with respect to its representation of MDX during the 2016 session of the Florida Legislature.

Moreover, the findings indicate that Gomez Barker, led by its principal and lobbyist Fausto Gomez, subverted the County's interests to those of MDX with respect to the County's transportation plan – listed among its "critical priorities" for the past legislation session. As a result, the County lost an opportunity to receive nearly \$1 billion in state transportation funding for light rail and other mass-transit projects over the next 30 years. In addition, the County lost an opportunity to create additional TIF funding mechanisms using property taxes to generate as much as \$1.5 billion for transportation projects over that same period.

The investigation supports the finding that, rather than actively promote the County's transportation-related legislative proposals among state lawmakers, Gomez Barker effectively sabotaged the County's efforts to obtain funding for local mass-transit by submitting legislation in the County's name that was developed by and to promote the interests of MDX. Rather than deliver transportation dollars to the County, the proposal submitted by Gomez Barker served to undercut County control of such resources and shifted control to MDX.

MDX's own executive director identified key portions of the legislation submitted in the name of the County by Gomez Barker to the Office of Sen. Flores as being a byproduct of its efforts to promote MDX's legislative agenda, and said he was unaware of any County legislation seeking to leverage similar resources from state lawmakers and transportation officials. The director noted Mr. Gomez serves as MDX's main lobbyist, and that he was heavily involved in developing and promoting said legislation regarding expressway authorities.

By contrast, Sen. Flores, who sponsored the initial transportation bill (SB 1372), stated that she met with Gomez and his associate, Manny Reyes, prior to the session and that at no time did they disclose that the draft legislation they would subsequently provide was linked in any way to MDX. "I want to be clear: We never thought that was an MDX bill," Sen. Flores stated. "We were under the impression this was the County's transportation bill ..."

The investigation found the County's draft legislation was never submitted by Gomez or his firm to state lawmakers, in the intended format, and that Gomez misled lawmakers such as Sen. Flores into supporting the MDX bill. Sen. Flores even used her clout to meet with the state's top transportation official to lobby for funding she thought would be used to promote the County's transportation agenda.

The MDX legislation submitted to Sen. Flores' office was later forwarded to State Rep. Nunez's office, which subsequently introduced a bill described as "an act relating to expressway authorities." Because the bill related to expressway authorities, the bill later died on the grounds of "germanity" after the County attempted to re-introduce its legislation by filing a "strike-all amendment." By this time, it was too late to file a new bill, and subsequent attempts to attach the County's proposal to other bills failed as well, officials said.

Whereas MDX officials said they felt there was no conflict between their legislative proposals and those of the County, others described the maneuver as a "power grab" that would, in effect, convert MDX into a full-fledged "transportation" agency that would compete with Miami-Dade Transit, the County's transportation arm, for funding and ridership.

Simply put: The legislation put forward in the name of the County "wound up as an MDX bill and not a County bill," according to lobbyist Book and other County officials involved in the process of developing and promoting the County's legislative priorities. The CAO, which oversaw and coordinated the effort to promote the County's legislative agenda, made it clear by its action of removing Gomez as the county's transportation lobbyist that it felt that the legislation resulting from Gomez's action did not reflect the County's best interests.

If for any reason, Gomez or his associates felt it was truly in the County's interest to adopt the approach specified in HB 1377 or SB 1372 (expanding the mission of expressway authorities to include other forms of transportation), they should have discussed this with the County's legal team and coordinated the effort in a more transparent manner. That never happened, raising serious questions about whether the County's interests were subordinated to those of MDX, which had also been paying Gomez to advance its own legislative agenda.

The paper trail makes it abundantly clear that Fausto Gomez and his associate, Manny Reyes, submitted legislation developed by MDX in place of legislation developed by the County, when it transmitted draft legislation to the office of Sen. Anitere Flores on Nov. 16, 2015, and that this draft proposal was used as the template for both SB 1372 and HB 1377.

Mr. Gomez, through his attorney, argued in a Sept. 23 letter to COE Advocate Michael Murawski that he was acting in the County's best interest at all times and "never acted without the knowledge or consent of County officials." The letter characterizes the County's legislative approach as being "poorly conceived" and relying on "piecemeal pet projects."

The letter further contends that state transportation officials were unwilling to approve funding to the County because of an alleged "cloud of financial mismanagement" over Miami-Dade Transit (FDT), resulting from a 2011 audit of federal transit funds allocated to FDT. As a result, the letter states that Gomez saw MDX as a "far more palatable funding recipient for the

decision-makers in the [Florida Department of Transportation.]”

The letter further contends that, based on state statute, the County was ineligible for the requested \$30 million to \$40 million in funding for light rail projects.

Mr. Gomez, through his attorney, insists that County legal advisers were fully apprised of these and other concerns about the County’s proposed transportation legislation. The investigation, however, was unable to turn up any documentation to this effect, and Gomez declined repeated invitations from COE to appear for an interview.


Key members of the County’s legislative team were interviewed and none substantiated this claim – i.e., that Gomez told them MDX was the appropriate vehicle for implementing the County’s transportation plan. Furthermore, all of these individuals expressed they were caught off guard when the bills that emerged from Bill Drafting utilized MDX in this capacity. This was noted quite clearly in ACA McCarty’s Jan. 22, 2016, email noting that he was reassigning the County’s transportation legislation to another lobbyist, expressing that: “Our language is not the language that appeared in either SB 1372 or HB 1377” and that “the language in those bills puts MDX in charge of the transportation reinvestment zones,” and other important elements of the County’s proposed transportation legislation.

Gomez’s assertion that he had consulted with unnamed County Commissioners about the legislative change was denied by every single County Commissioner, either directly or through an aide to the undersigned investigator.

It is further troubling that Mr. Gomez, who, when pressed for an explanation by County leaders and legal advisors, suggested that it was state lawmakers and their staff who altered the County’s proposals in favor of MDX.

Lastly, it should be noted this is not the first time Mr. Gomez has been found to have engaged in a conflict of interest with respect to contract lobbying. He was found to have failed to disclose a conflict following a 2009 inquiry by the COE.

In light of these present findings and in light of Mr. Gomez’s recidivism with respect to the County’s conflict-of-interest rules, the BCC should assert its powers under Miami-Dade County Ordinance Section 2-11.1.2, which gives the Commission the authority to terminate a contract with and/or to prohibit such a lobbyist from entering into a contract with the County for a period of up to three years.

A handwritten signature in black ink, appearing to read 'Karl Ross', followed by a long horizontal line extending to the right.

Karl Ross, COE Investigator