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**MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST**

In re: Miami Beach Pension Board Members
Sidney Reese, Jack Richardson, Louis Alberti,
Dale Twist, and Warren Smith

PUBLIC REPORT AND FINAL ORDER

Complainant, Andrew Gorny, filed the above-referenced Complaint against Respondents Donald Sapp, Sidney Reese, Jack Richardson, Louis Alberti, Dale Twist, and Warren Smith—all members of the Miami Beach Police and Firefighters Pension Board and City of Miami Beach employees. Complainant Gorny alleged that on August 18, 2005, at a Pension Board hearing in which Mr. Gorny's disability retirement benefits were denied, members of the Board were not in compliance with the County Code of Ethics Ordinance at § 2-11.1 (k) because they had not submitted accurate financial disclosure forms to the Municipal Clerk.

Section 2-11.1(k)(2) of the Conflict of Interest and Code of Ethics Ordinance¹, *Prohibition on Outside Employment*, provides in pertinent part—

All...municipal employees engaged in any outside employment for any person, firm, corporation, or entity other than...the respective municipality...shall file...an annual report indicating the source of the outside employment, the nature of the work being done pursuant to the same, and any amount or types of money or other consideration received by the employee from said outside employment.... Municipal employee reports shall be filed with the clerk of their respective municipalities....

An investigation conducted by the Commission on Ethics revealed that misinformation regarding "outside employment" had been disseminated at the City departments employing Respondents. The departments erroneously stated that work coordinated and arranged by the departments, which the departments referred to as "off duty" employment, was not "outside employment." The departments mistakenly advised their employees that only work coordinated

¹ Pursuant to 2-11.1 (a) of the Conflict of Interest and Code of Ethics Ordinance, the Code is applicable to municipal as well as county personnel "insofar as their individual relationships with their own municipal governments are concerned."

and arranged by the employees themselves, independent of their respective departments, was “outside employment” and, thus, necessary to report.

On September 18, 2006, the Ethics Commission determined that legal sufficiency existed for all Respondents and that probable cause existed for all Respondents, except for Donald Sapp.² The Commission noted that Respondents for whom probable cause was found followed directions established by their respective departments. Consequently, their failures to file appropriate outside employment statements with the Miami Beach City Clerk were insubstantial, inadvertent, and unintentional violations of Section 2-11.1 (k). The Ethics Commission dismissed Complaint Number C 06-21 against Respondents Reese, Richardson, Alberti, Twist, and Smith with a Letter of Instruction in full satisfaction of the Complaint.

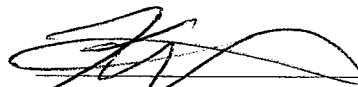
Therefore it is:

ORDERED AND ADJUDGED THAT the COMPLAINT is hereby dismissed and all penalties waived.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics & Public Trust in public session on September 18, 2006.

MIAMI-DADE COUNTY COMMISSION ON
ETHICS & PUBLIC TRUST

By:



Kerry E. Rosenthal, Esq.
Chairman

² Donald Sapp was found to have no outside employment during 2004 and, therefore, not required to file an outside employment statement. Consequently, on September 18, 2006, the Complaint against Respondent Sapp was dismissed for lack of probable cause.



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MIAMI, FLORIDA
C 06-21

In re: Miami Beach Pension Board Members

LETTER OF INSTRUCTION

I. Background—Miami Beach Pension Board Members Did Not File Outside Employment Statements with the Municipal Clerk

A citizen filed the above-referenced Complaint against certain Miami Beach Police and Firefighters who were members of the Police and Firefighters Pension Board. The Complaint alleged that Board members were not in compliance with the County Code of Ethics Ordinance at § 2-11.1 (k) because they had not submitted accurate Outside Employment Statements to the Municipal Clerk.

Section 2-11.1(k)(1) of the Conflict of Interest and Code of Ethics Ordinance states that no municipal employee “shall receive any compensation for his or her services...from *any source other than the [municipality]* (Emphasis added).¹ The Miami Beach Code of Ordinances at Section 2-453 (b) is consistent with the County Ordinance in this regard:

No officer or employee of the city shall receive any compensation for his [or her] services *from any source other than the city* of which he [or she] is an employee.... (Emphasis added.)

City employees named in this Complaint were erroneously advised that they were not required to file annual Outside Employment Statements with the Municipal Clerk for off-duty

¹ Pursuant to 2-11.1 (a) of the Conflict of Interest and Code of Ethics Ordinance, the Code is applicable to municipal as well as county personnel “insofar as their individual relationships with their own municipal governments are concerned.”

work coordinated and arranged by their Departments. On September 18, 2006, the Ethics Commission found that, for five of the six municipal employees, the Complaint was supported by Probable Cause, but dismissed it with this Letter of Instruction in full satisfaction of the Complaint.

II. Responsibilities Regarding Outside Employment Statements

All County and municipal employees must disclose *income from sources other than their public employer*. This means that Outside Employment Statements must be filed by police and firefighters for their off-duty work, if compensation is received *directly from the outside entities that have hired them*. Public employees are *not* required to file Outside Employment Statements for off-duty work if the off-duty work is compensated *through the government employer's payroll system with a government check*.

A government employer that arranges and coordinates outside employment for its employees gives tacit approval of the outside employment; however, government coordination does not obliterate the employee's requirement to file Outside Employment Statements when compensation for outside employment is made directly to the government employee by an outside entity.

In order to comply with Section 2-11 (k) of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance regarding Outside Employment, the Commission on Ethics advises the following:

1. SEEK WRITTEN PERMISSION FOR ENGAGING IN OUTSIDE EMPLOYMENT ANNUALLY, unless outside employment is coordinated and arranged by your department.

- County employees must receive *written permission* from their immediate supervisor, division director, and department directors on the form titled REQUEST FOR OUTSIDE EMPLOYMENT, which is available for downloading at http://elections.miamidade.gov/employment_outside.asp. Municipal employees must seek similar written approval from their supervisors.
- County employees must submit the signed REQUEST FOR OUTSIDE EMPLOYMENT form *annually* to the County Supervisor of Elections.

Municipal employees must submit this information *annually* to their respective municipal clerks.

2. FILE OUTSIDE EMPLOYMENT *INCOME* STATEMENTS *ANNUALLY*.

- * All County and municipal employees must report income received from *any source other than their respective government* using the form titled OUTSIDE EMPLOYMENT STATEMENT, which is available at http://elections.miamidade.gov/employment_outside.asp.
- * OUTSIDE EMPLOYMENT STATEMENTS must be submitted no later than 12:00 noon on July 1st of each year, including the July 1st following the last year that the public employee has held outside employment. County employees file with the County Supervisor of Elections. Municipal employees file with their respective municipal clerks.
- * The County Manager or any city manager may require monthly reports from individual employees or groups of employees for good cause.

3. COMPORT WITH THE HOLDING BY THE COMMISSION ON ETHICS REQUIRING *ALL* SALARIED GOVERNMENT WORKERS TO FILE.²

In Request for Opinion RQO 04-48, the Commission on Ethics held that—

- * all *part-time* as well as *full-time* public employees must file outside employment statements, regardless of the terms of their compensation
- * all individuals hired through a *temporary agency* who work for government *longer than six months* must file outside employment statements.

III. Restrictions on outside employment serve several public purposes.

Public service is a public trust. Ordinances regulating outside employment ensure that the principal labor of government employees benefits the public. Government employees must perform their public duties at optimum professionalism, intelligence, efficiency, and effectiveness—not compromised by duties to others.

Compensation of government employees is an important public record. Disclosing compensation from all sources fosters the public's confidence in government actions and processes.

² *But*, volunteers and interns, even if they receive a stipend, are *not* required to file outside employment forms. RQO 04-48, May 18, 2004.