

July 21, 2008

Darcee S. Siegel, Assistant City Attorney
City of North Miami Beach
17011 NE 19th Ave.
North Miami Beach, FL 33162-3100

Via First Class Mail and Fax at 305.787.6004

Re: **INQ 08-123**
Councilman Myron Rosner's possible voting conflict
Miami-Dade County Code at Section 2-11.1 (d)

Dear Ms. Siegel:

In your letter dated July 7, 2008, you asked if Councilman Myron Rosner has a voting conflict on matters present to the North Miami Beach City Council by attorney Tom Moon or the law firm Mr. Moon is associated with, Fromberg, Perlow & Kornik, P.A.

In brief, no conflict under the County Ethics Code is triggered, based on the facts you presented, as restated below:

- Tom Moon, an associate of the law firm of Fromberg, Perlow & Kornik, P.A., represented Councilman Rosner approximately one year ago, without payment, in a lawsuit.
- The issue in the lawsuit is completely unrelated to any matters that have come before the City of North Miami Beach in the past, are currently before the City, or are likely to come before the City in the future.
- Councilman Rosner and Mr. Moon have had no further dealings subsequent to the final judgment rendered in the lawsuit last year.

The section of the Code relevant to this matter is found at Section 2-11.1 (d), *Further prohibition on transacting business with the County*:

... [N]o [council member] shall vote on or participate in any way in any matter presented to the [city council] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of [the city council members]: (i) ***officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or*** (ii) ***stockholder, bondholder, debtor, or creditor***, if in any instance the transaction or matter would affect the [council member] in a manner distinct from the manner in which it would affect the public generally. Any [council member] who

has any of the above relationships *or* who *would or might, directly or indirectly, profit or be enhanced by* the action of the [city council members] shall absent himself or herself from the [council] meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (Emphasis added.)

The Ethics Commission has rendered several opinions on this section of the Ethics Code; the following two represent fact patterns somewhat similar to Councilman Rosner's.

- In RQO 05-24, a County Commissioner was allowed to vote on matters presented by a law firm that employed his son as an associate. The law firm represented clients who appeared regularly before the County Commission on land use and other local government issues.
- In RQO 05-108, a City Mayor was allowed to vote on matters before the City Council presented by a law firm in which her son was a partner.

In both cases, the Ethics Commission found that the elected officials' relationships with the lawyers and their firms did not correspond to any of the relationships prohibited under the Code. Additionally, neither elected official was likely, directly or indirectly, to profit or be enhanced by voting on matters represented by these particular law firms.

Similarly, Councilman Rosner does not have a voting conflict on matters presented by Tom Moon or the law firm of Fromberg, Perlow & Kornick, P.A., because Councilman Rosner does not have a current prohibited relationship with Mr. Moon or his firm. Additionally, it does not appear that Councilman Rosner will or might, directly or indirectly, profit or be enhanced by voting on matters represented by Mr. Moon or his firm.

The Ethics Commission, at its most recent public meeting on July 8, 2008, recognized the difficulties facing city attorneys when responding to ethics questions that arise from the dais, without prior notice, during public meetings. Acting with an abundance of caution under these circumstances is understandable. Thank you for contacting the Ethics Commission subsequently for further clarification in this matter.

Sincerely,

VICTORIA FRIGO
Staff Attorney

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Attachments:
RQO 05-24 Carlos A. Gimenez
RQO 08-108 Susan Gottlieb