

January 28, 2009

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City of Miami Office of the City Attorney  
444 SW 2<sup>nd</sup> Ave., Suite 945  
Miami, FL 33130

**Via First Class Mail and Fax at 305.416.1801**

Re: **INQ 09-12**, City of Miami Downtown Development Authority (DDA)

Dear Ms. Xiques:

In an email dated January 21, 2009, you asked the Ethics Commission staff for an informal opinion regarding potential conflicts for members of the City of Miami Downtown Development Authority (DDA) who may wish to participate in the **Façade Improvement Grant Program** and **Tenant Improvement Grant Program**. Both programs are funded by the City of Miami DDA, but administered by the Downtown Miami Partnership, Inc., (DMP), an independent 501(c)(6) nonprofit organization.

The Ethics Commission staff finds that DDA members do not violate county or city ethics codes when contracting with the DMP to participate in the **Façade Improvement Grant Program** and **Tenant Improvement Grant Program**. The Ethics Commission has previously opined that DDA members could participate in one component of the **Façade Improvement Grant Program** involving free shutter removal and replacement.<sup>1</sup> The other component of the **Façade Improvement Grant Program** as well as the **Tenant Improvement Grant Program** are virtually the same as the free shutter program on the essential elements, *i.e.*—

- All property owners and tenants enter into contracts with the DMP, not the DDA;
- The DMP ranks applicants according to established criteria;
- DDA members do not receive special consideration in the ranking;
- The DMP monitors all work performed;
- Final payments are executed by the DMP;
- Duties of the DDA regarding all aspects of the programs are ministerial and performed by staff.

Also relevant is the legal requirement that between 8 to 12 members of the 15-member DDA must reside, operate businesses, or own property in the city's designated downtown development areas. The **Façade Improvement Grant**

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<sup>1</sup> RQO 08-21 (April 24, 2008).

**Program** and **Tenant Improvement Grant Program** are available only to property owners and tenants in one of these designated areas.

The Miami-Dade County Conflict of Interest and Code of Ethics at §§ 2-11.1 (c) and (d) generally prohibits government personnel, individually or through a firm, from entering into contracts or transacting business with their own government. A limited exception is made for advisory board members at § 2-11.1 (c)(3), but the exception does not extend to board members contracting with their own boards. Similarly, the City of Miami Conflicts of Interest Code at § 2-611 *et seq.* does not allow board members to enter into any contracts or transact any business with the city.

Because property owners and tenants, including DDA members, apply directly to the DMP (an entity completely independent of the DDA), board members are not contracting with their own board or with the city.

Additionally, DDA members have not violated the Ethics Code at § 2-11.1 (v) regarding voting conflicts because initiation of the programs was strictly ministerial. Board members do not make official decisions regarding carrying out the programs, in particular, selecting applicants or directing funds to vendors or applicants.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Sincerely,

VICTORIA FRIGO  
Staff Attorney