



August 18, 2009

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Jose A. Goyanes
4 SE 1st Street
Miami, FL 33131

RE: INQ 09-135 Ethics Opinion regarding DDA and DMP board memberships

Dear Mr. Goyanes:

In a letter dated August 11, 2009, you asked the Ethics Commission staff if your current service as an "advisory" board member with the Downtown Miami Partnership, Inc. (DMP), a nonprofit organization, presents any ethics conflicts for you based on your concurrent service as a member of the City of Miami Downtown Development Authority (DDA).

In sum, this is our opinion:

1. Your "advisory" board service with the DMP does not prevent the DMP from entering into contracts with the City of Miami because you have no ownership interests in the DMP, a nonprofit organization.
2. When the DDA votes on matters related to the DMP, you are required to recuse yourself if you would be directly affected by the vote and you concurrently serve as a DMP board member, officer, or any other position enumerated in the County Code.

FACTS

Florida corporate records indicate that you have not been a registered board member of the DMP since at least April 11, 2007. We understand that you resigned as secretary of the board of the DMP at approximately the same time that you were appointed to Miami's DDA.

According to Josie Correa, Executive Director of the DMP, the "advisory" board position you hold with the DMP is, to some degree, honorary.¹ "Advisory" board members may attend DMP board meetings and offer suggestions; however, "advisory" board members do not vote.

Under the sponsorship of Commissioner Marc Sarnoff of District 2, the City of Miami awarded the DMP a grant through the Community Development Block Grants (CDBG)/Technical Assistance Program.² The DDA took no actions and has no responsibilities associated with this CDBG technical assistance grant.³

¹ Telephone interviews on Aug. 17 and 18, 2009.

² The grant covers the DMP's administrative costs in providing technical assistance to businesses in the downtown area; technical assistance includes helping businesses search for sites, negotiate leases, procure small business loans, repackage loans, obtain permits and licenses, and develop employment strategies.

³ Telephone interview with Dennis Johnson, Contract Compliance Analyst, City of Miami Department of Community Development, Aug. 18, 2009.

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LEGAL ANALYSIS
REGARDING DOING BUSINESS WITH THE CITY

Under the County Code at § 2-11.1 (c)(3), a city board member is not allowed to enter into a contract with the city, individually or through a business entity in which he has a controlling financial interest, if the contract would be “subject to the regulation, oversight, management, policy setting or quasi-judicial authority” of the board of which he is a member. Because the laws regulating nonprofit corporations do not allow financial ownership interests in nonprofits such as the DMP, you do not have a financial interest in the DMP and, therefore, you do not have a conflict under this part of the County Code.

The City of Miami Conflicts of Interest Code at § 2-612 (a) states that no board member “shall enter into any contract or transact any business with the city or any person or agency acting for the city....” Two Miami City Attorney Legal Opinions clarify this prohibition to include any entity in which the board member or his immediate family has an ownership interest.⁴ Again, because no ownership interest is possible in a nonprofit organization, you have no ownership interest in the DMP and, therefore, you have no conflict under this part of the City Code.

LEGAL ANALYSIS
REGARDING VOTING

Under the County Ethics Code at § 2-11.1 (v), as a member of the DDA, you may not vote on matters related to the DMP if you will be directly affected by the vote and you are an “officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary” or “stockholder, bondholder, debtor or creditor” of the DMP. We understand that you no longer serve as board secretary of the DMP. However, in order to avoid appearances of impropriety, you may wish to clarify, when matters affecting the DMP come before the DDA for a vote, that you hold an “advisory,” non-voting position with the DMP.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance and the City of Miami Conflicts of Interest Code, 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

copies: Josie Correa, Executive Director
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⁴ See Miami City Attorney Legal Opinions № 05-05 and № 08-002.