

INQ 09-17

January 29, 2009

Erica Wright, Esq.
269 N.W. 7th Street, Apartment 421
Miami, FL 33136

Dear Erica:

As a member of the Miami-Dade Commission on Ethics and Public Trust, you wish to know whether any conflicts would be created if you were to provide legal services to Miami-Dade County government and municipal governments within Miami-Dade County on a contractual basis given that these governments, specifically, their officials and employees, fall under the jurisdiction of the Ethics Commission.

Before giving you an opinion, I conferred with Ardyth Walker and Victoria Frigo. We can offer you general guidance regarding your question and then deal with specific circumstances as they materialize at a later date.

Most importantly, representing local governments in Miami-Dade County on a contractual basis would not bar you from sitting on the Ethics Commission. The prohibition extends only to those individuals who are employed by Miami-Dade County or any Miami-Dade County municipality. We are of the opinion that contractors are not employed by the governments that retain their services.

Another area to examine is the voting conflicts section of the county's ethics code. A voting conflict occurs when a board member has a special relationship with a party who has a matter before that board and the board member is directly affected by the action taken by the board. If you were under contract with a particular municipality and one of its officials or employees was charged with an ethics violation, a voting conflict conceivably could exist. It is not a conflict per se, as you might be performing legal services in one department and the charged party works for a different department. Thus, it depends on the parties to the contract and the nature of the work to be performed – whether your contract to provide legal services is with the governing board, the attorney's office or a specific department and the scope of your services. However, in an abundance of caution, I would recommend that you should recuse yourself if any complaint was presented to the Ethics Commission against an official or employee of a government when you are under contract with that government.

Once your services have been rendered and your fees have been paid, the voting conflicts of county ethics code is no longer applicable. Therefore, you would be free to participate in and vote on any items involving a former client. Of course, there is always the standard of impartiality that envelops those who sit on quasi-judicial boards, but this principle is not embodied in the county's ethics code and is only likely to be raised on appeal if a party does not believe it received a fair hearing before the Ethics Commission.

At the risk of stating the obvious, I would advise against you performing any legal services for any local government where the work might encompass state, county or municipal ethics laws, rules, ordinances or regulations. This would include dispensing advice to clients who seek interpretations of the applicable ethics laws. Similarly, you could not represent clients before the Miami-Dade Ethics Commission and could not work on appeals taken as a result of decisions by the Miami-Dade Commission on Ethics.

Finally, I see no reason why the arrangements you are contemplating with local governments in Miami-Dade County would present any obstacles for you to continue to be an effective and fair Ethics Commissioner. Please do not hesitate to consult with me whenever you feel such a consultation is warranted.

Sincerely,

Robert Meyers,
Executive Director