

**Meyers, Robert (COE)**

JNQ 11-124

**From:** Meyers, Robert (COE)  
**Sent:** Wednesday, August 10, 2011 1:36 PM  
**To:** 'Cynwcurry@aol.com'  
**Subject:** RE: Opa-Locka

Dear Cynthia:

Thank you for your request for opinion. The relevant factors are that a company which you have an ownership interest in owns a vacant parcel of land in the City of Opa-Locka. On February 23, 2011, the City Commission authorized the City Manager to purchase the property. On June 24, 2011, you submitted an application for the position of City Manager for the City of Opa-Locka. The closing on the property has not occurred yet due to a quiet title process which needs to be completed. Among the questions presented, you wish to know whether any conflicts of interest exist because you are applicant for the City Manager position and at the same time your private company is attempting to finalize a real estate transaction with your potential employer.

The County's Conflict of Interest and Code of Ethics Ordinance does not apply to candidates for government positions. Therefore, no conflict of interest is created if the closing were to take place while you are still an applicant for the position. Obviously, if you are not selected for the position or you withdraw from the pool, any possible conflict of interest question becomes moot and the date of the closing is irrelevant. Furthermore, if you are selected for the position and you were to begin your employment with Opa-Locka after the closing, a conflict of interest would not exist, either.

The last scenario is the most problematic and involves your selection as City Manager before the closing. If this is the case, you would be transacting business with your government employer, which is generally prohibited under the County ethics code and this conflict cannot be waived. However, an agreement in principle was entered into between your private company and the City (even a purchase price was agreed to) and this agreement pre-dates your employment with the City. Generally speaking, the Ethics Commission understands it does not have the authority to impair contracts that have been reached between two parties when at the time of the contract neither party was subject to the County ethics ordinance. On the other hand, a closing taking place after you become City Manager essentially requires you to wear two hats – to represent and protect the interests of the City as its manager and simultaneously represent the interest of your company. Given this dynamic, it would be impossible for you to engage in any substantive negotiations over terms and conditions of the sale, as you would be negotiating against yourself. Therefore, assuming the closing were to occur after you became City Manager, the only means by which the sale could go through is for there to be no change to the material terms and conditions associated with the sale that were agreed to by the parties before you were hired by the City of Opa-Locka. Any change that could be viewed as bestowing additional financial benefits to your private company at the closing, or conversely, negatively affecting Opa-Locka would not be permitted under the ethics ordinance. Anything of a ministerial nature which has no impact on the material terms of the contract would probably be acceptable.

Finally, a closing after you are hired as city manager is fraught with all sorts of "appearance" problems. Although the Ethics Commission has no authority to weigh in on appearance of impropriety questions, I can imagine there would be a great amount of backlash if you were at the closing as the Opa-Locka City Manager and the owner of KYM PENN LLC. Assuming the City Commission wishes to hire you as its next City Manager, the best solution would be for you to start after the closing and have that written into your employment agreement with Opa-Locka. If the closing occurs while you are still in the applicant pool, no legal conflict of interest is created as I stated above, but it could subject you to some criticism if at some time after the closing, you are offered the position and you accept it.

I know I have given you a lot to mull over, so feel free to call me on my cell phone at (305) 986-5955 should you wish to discuss.

Thanks,

Robert

8/10/2011

Robert Meyers, Executive Director  
Miami-Dade Commission on Ethics and Public Trust

**From:** Cynwcurry@aol.com [mailto:Cynwcurry@aol.com]  
**Sent:** Monday, August 01, 2011 10:12 AM  
**To:** Meyers, Robert (COE)  
**Subject:** Opa-Locka

This is the situation:

KYM PENN LLC is a for profit entity registered with the Department of State, Division of Corporations with the managing members as Garland Curry and Cynthia W. Curry. KYM PENN LLC has only one asset and that is the vacant parcel of land located in the City of Opa-Locka (Folio Number: 08 2122000021).

On September 8, 2010, City of Opa-Locka Resolution No. 10-8115 authorized the City Manager to negotiate with KYM PENN, LLC to purchase property/folio referenced above.

On January 21, 2011, the City of Opa-Locka Management and KYM PENN LLC reached an agreement for sale and purchase.

On February 23, 2011, Resolution No. 11-8187 (which included the executed agreement above) authorizing the City Manager to purchase the referenced property for the amount of \$220,000 was approved by the City Commission

Closing on the property has not occurred yet because a quiet title process was necessary before closing could take place and that process is nearing completion.

In case additional time was required to complete the quiet title process, an addendum to the sales agreement was executed on May 16, 2011 allowing for an initial extension of six months if necessary.

On June 3, 2011, the position of City Manager was posted for the City of Opa-Locka with a closing date to apply of June 24, 2011. I submitted my resume as application for the position on June 24, 2011.

8/10/2011