

## Frigo, Victoria (COE)

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**From:** Frigo, Victoria (COE)  
**Sent:** Friday, August 03, 2012 4:03 PM  
**To:** 'Rafael E. Andrade, Esq.'  
**Cc:** 'Aguila, Raul'; Centorino, Joseph (COE)  
**Subject:** Lobbyist Contingency Fees, Section 2-485.3 (INQ 12-132)

Mr. Andrade,

In response to your question about lobbyist contingency fees, you may lobby the City of Miami Beach on behalf of BMCS and/or MSL, as long as the entire, definitive amount of compensation related to your lobbying activities is established at the time you are engaged as a lobbyist and this amount is not dependent on the success or failure of your lobbying efforts on behalf of BMCS and/or MSL.

Investment income and sales income are distinguishable from compensation received for lobbying. Therefore, investment income and sales income do not violate the Miami Beach lobbying ordinance at Sec. 2-485.3 as long as you have a separate agreement in place that defines the certain amount of compensation you are receiving as a lobbyist.

Please feel free to contact me if I can be of further assistance.

Sincerely,

**VICTORIA FRIGO, STAFF ATTORNEY**

Phone: 305 350-0601

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19 West Flagler St., Suite 820  
Miami, FL 33130

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**From:** Rafael E. Andrade, Esq. [mailto:ralph@randradelaw.com]  
**Sent:** Friday, August 03, 2012 9:41 AM  
**To:** Frigo, Victoria (COE)  
**Cc:** 'Aguila, Raul'  
**Subject:** FW: Request for Opinion - Section 2-485.3

Dear Ms. Frigo:

I am respectfully requesting an informal advisory opinion concerning the application of Section 2-485.3 of the Code of the City of Miami Beach to commission payments to an entity that is in the business of procuring customers for an entity that provides credit card merchant processing services.

On or about August 31, 2010, Business Merchant Card Services, Inc. ("BMCS"), entered into an Independent Sales Organization Agreement with Ltd Merchant Services, LLC ("MSL") (the "Agreement"). Pursuant to the Agreement, MSL pays BMCS a percentage of the processing fees charged to customers procured by BMCS on a monthly basis. It is my opinion that BMCS is a "salesperson" as defined in RQO 06-34.

I am a 25% shareholder of BMCS, and receive 25% of corporate distributions, if any. I am neither a principal, contract lobbyist, governmental affairs personnel, nor involved in corporate policy-making for BMCS.

On or about July 18, 2012, the City of Miami Beach City Commission authorized the issuance of a Request for Proposals for credit card merchant processing services ("RFP"). MSL intends to submit a proposal in response to the RFP. If MSL is awarded the RFP, BMCS will receive compensation from MSL pursuant to the Agreement.

Please opine whether I may lobby the City of Miami Beach City Commission, City Administration, and applicable City boards or committees on behalf of BMCS and/or MSL, with or without compensation, and receive 25% of BMCS' corporate distributions, if any, without violating Section 2-485.3 of the Code of the City of Miami Beach.

Below, please find communications that I have had with the City of Miami Beach City Attorney's Office concerning this matter. Please note that I registered as a lobbyist (in my capacity as a shareholder for BMCS) on behalf of MSL on July 17, 2012, and subsequently withdrew on July 25, 2012 after receiving the below communication from Raul Aguila, Chief Deputy City Attorney, on July 24, 2012.

If you have any questions or require further information or documentation, please feel free to contact me at your earliest convenience.

Thank you.

Regards,

Ralph

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**From:** Aguila, Raul [<mailto:RaulAguila@miamibeachfl.gov>]  
**Sent:** Tuesday, July 24, 2012 3:06 PM  
**To:** Rafael E. Andrade, Esq.  
**Subject:** RE: Request for Opinion - Section 2-485.3

Ralph:

As we agreed, I have done further research on this and am attaching two opinions from the Commission on Ethics which I think you will find helpful (The County Code prohibition on contingency fees—Section 2-11.1(s)(7)—is virtually identical to our prohibition in City Code Section 2-485.3).

Unfortunately, after reviewing the opinion, I believe that MSL's payment to BCMS (the organization in which you own a 25% interest) may be deemed to be a contingency fee under the City Code provisions. In particular, please refer to RFAO 06-34 (attachment 2) which distinguishes commissions paid to salespeople (who are also registered as lobbyists) vs. payments to principals and other individuals involved in policy-making, which you could fall under.

Based on the above, my recommendation to you would be as follows:

1. Withdraw as a lobbyist entirely; or
2. Request an opinion from the Miami-Dade Ethics Commission. As to this point—and in clarification of your paragraph 3 below-- I believe it would be appropriate for you to withdraw, pending your getting an opinion from them that there's no problem with you registering, based on the payment structure to BMCS, if MSL is awarded the bid.

Thanks,

Raul

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**From:** Rafael E. Andrade, Esq. [<mailto:ralph@randradelaw.com>]

**Sent:** Tuesday, July 17, 2012 3:20 PM

**To:** Aguila, Raul

**Subject:** FW: Request for Opinion - Section 2-485.3

Dear Mr. Aguila:

The communication shall serve to confirm my understanding of our conversation concerning the above referenced matter.

You do not believe that the shareholder's compensation I receive, if any, from BMCS pursuant to an ISO Agreement between BMCS and MSL is a "contingency fee." However, before confirming your opinion in writing, you are going to consult with the Miami-Dade Commission on Ethics and Public Trust.

Also, I can register and lobby the City Commission but will have to withdraw if the Miami-Dade Commission on Ethics and Public Trust opines that the shareholder's compensation I receive, if any, from BMCS pursuant to the ISO Agreement between BMCS and MSL is a "contingency fee."

If any of the within fails to comport with your understanding of our conversation, please advise at your earliest convenience.

Thank you.

Regards,

Ralph

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**From:** Rafael E. Andrade, Esq. [<mailto:ralph@randradelaw.com>]  
**Sent:** Tuesday, July 17, 2012 8:44 AM  
**To:** 'Aguila, Raul'  
**Subject:** FW: Request for Opinion - Section 2-485.3

Hello Raul:

Have you had a chance to look at this? The Commission meeting is tomorrow and I'm facing a bit of a time crunch.

Thank you.

Regards,

Ralph

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**From:** Smith, Jose [<mailto:JoseSmith@miamibeachfl.gov>]  
**Sent:** Sunday, July 15, 2012 1:24 PM  
**To:** 'ralph@randradelaw.com'  
**Cc:** Aguila, Raul; Damien, Elizabeth  
**Subject:** Re: Request for Opinion - Section 2-485.3

I am forwarding your request for a legal opinion to Raul for a response.

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MIAMIBEACH

Jose Smith, City Attorney

OFFICE OF THE CITY ATTORNEY  
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Sent from my BlackBerry Wireless Device

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**From:** Rafael E. Andrade, Esq. [<mailto:ralph@randradelaw.com>]  
**Sent:** Sunday, July 15, 2012 01:20 PM  
**To:** Smith, Jose  
**Subject:** Request for Opinion - Section 2-485.3

Dear Mr. Smith:

The City Commission will consider the issuance of the attached RFP on July 18, 2012. I am considering registering to lobby this issue but before I do, I would like your opinion on your interpretation of Section 2-485.3 of the City Code (Contingency fee prohibited).

I am a 25% shareholder of an entity ("BMCS") that entered into an Independent Sales Organization Agreement in 2010 with an entity that provides credit card merchant processing services ("MSL").

BCMS gets paid a percentage of the fees charged by MSL to entities that BCMS introduces or brings to MSL's attention. I receive 25% of BCMS' distributions.

BCMS has bought the attached RFP to MSL's attention. If the Commission authorizes the issuance of the RFP, MSL will be submitting a response to same. If MSL is awarded the contract, BCMS will be paid a percentage of the fees charged by MSL to the City.

I do not believe the financial arrangement between BMCS and MSL, as applied to the RFP, falls within the definition of a "contingency fee" in Section 2-485.3 of the City Code. However, in an abundance of caution, I respectfully request your opinion on whether I can lobby on behalf of BCMS and/or MSL without violating the aforesaid section.

Thank you.

Regards,

Ralph

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