

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Monday, April 15, 2013 12:07 PM
To: Thomas F. Pepe (TPepe@southmiamifl.gov)
Cc: Centorino, Joseph (COE)
Subject: Revised INQ 13-90

Mr. Pepe,

Please disregard the previous ethics opinion given to you on behalf of a South Miami Planning Board member who wishes to enter into a contact with the South Miami Community Redevelopment Agency (CRA) to become a tenant in its business incubator building and who wishes to apply for a grant from the CRA.

The reason this opinion has been revised is that the South Miami City Code at Sec. 8A-1(c) differs substantially from the County Code at Sec. 2-11.1 (c)(3) on the subject of transacting business with the City.

The South Miami City Code at Sec. 8A-1(c) prohibits a Planning Board member (as defined in the City Code at Sec. 8A-1(b)(3)) from entering into any contract or transacting any business with a City agency. It is my understanding that you consider the South Miami CRA to be a City agency.

The Ethics Commission has consistently held that the activities the Planning Board member wishes to engage in—entering into a lease agreement with a City agency and accepting a grant from a City agency—are clear examples of contracting with the City and transacting business with the City.

Consequently, under the City Code, the Planning Board member may not contract with the City or any of its agencies to enter into a lease or accept a grant from the City or a City agency. Only a waiver from the City Commission with four affirmative votes will overcome this prohibition. *See* City Code at Sec. 8A-1(c)(3).

Thank you for calling my attention to the difference between City Code and the County Code on this subject. I apologize for any inconvenience my oversight may have caused you.

Sincerely,

VICTORIA FRIGO, SENIOR STAFF ATTORNEY

Direct Phone: 305 350-0601
Main Number: 305 579-2594
Fax: 305 579-0273



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

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From: Pepe, Thomas F. [mailto:TPepe@southmiamifl.gov]
Sent: Thursday, April 11, 2013 6:35 PM
To: Frigo, Victoria (COE)
Subject: RE: Planning Bd Member leasing or obtaining a grant from City (INQ 13-90)

Our city code provides:

Sec. 8A-1(c)

Prohibition on transacting business with the city. No person included in the terms defined in paragraphs (b)(1) through (6) and in paragraph (b)(9) shall enter into any contract or **transact any business** in which that person or a member of the immediate family has a financial interest, direct or indirect **with the city** or any person **or agency** acting for the city, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable.

Does the County have a similar provision in its ethics code?

Do you have an opinion as to whether a planning board member, who is included in paragraph (b)(3) and (4) of section 8A-1, would be in violate of this provision if he or she had a lease with an agency acting for the city, or applied for a grant from the city?

Would the lease be considered as "transacting any business" with the city?

Very truly yours,

Thomas F. Pepe

City Attorney
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From: Frigo, Victoria (COE) [FRIGOV@miamidade.gov]
Sent: Thursday, April 11, 2013 4:00 PM
To: Pepe, Thomas F.
Cc: Centorino, Joseph (COE)
Subject: [BULK] Planning Bd Member leasing or obtaining a grant from City (INQ 13-90)

Mr. Pepe,

The County Ethics Code would not be violated if a member of the City of South Miami Planning Board enters into a contact with the South Miami Community Redevelopment Agency (CRA) to become a tenant in its business incubator building. Also, the Planning Board member may apply for grant from the CRA without violating the Ethics Code.

The County Code at Sec. 2-11.1 (c)(3) only prohibits a board member from entering into contracts with a City department or agency that is subject to regulation or oversight by the board on which she serves. I assume that the CRA is not regulated or overseen by the Planning Board.

Other prohibitions for board members include the following, which may also be relevant to the facts you presented:

The County Code prohibits a Planning Board member from *appearing before the Planning Board on behalf of others*. Additionally, she may not receive compensation from third parties seeking a benefit from the Planning Board. *See County Code at Sec. 2-11.1 (m)(2)*.

A member of the Planning Board shall *not participate in any official action directly or indirectly affecting a business in which she or any member of her immediate family has a financial interest*. *See County Code at Sec. 2-11.1 (n)*.

A member of the Planning Board shall *not acquire a financial interest* in a project, business entity, or property at a time when she believes or has reason to believe that the said financial interest will be directly affected by her official actions on the Planning Board or by official actions by the City of South Miami. *See County Code at Sec. 2-11.1 (o)*.

If you have additional questions, please feel free to contact me.

Sincerely,

VICTORIA FRIGO, SENIOR STAFF ATTORNEY

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Main Number: 305 579-2594

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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]

Sent: Wednesday, April 10, 2013 6:39 PM

To: Frigo, Victoria (COE)

Subject: Planning Bd Member leasing or obtaining a grant from City

We have an prior city commissioner who has applied to be a tenant in the South Miami Community Redevelopment Agency's ("SMCRA") business incubator building; she has also applied for a SMCRA grant. Now she has been appointed to be a member of the planning board but she has not taken her oath of office. My concern is that as a planning board member she would be prohibited from doing business with the city, or with one of its agencies, the SMCRA. Would this be an ethical violation if she takes her oath of office and also if she is a tenant of the SMCRA, or thereafter becomes a tenant and/or obtains a grant form the SMCRA for her business?

Very truly yours,

Thomas F. Pepe

City Attorney
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From: Frigo, Victoria (COE) [FRIGOV@miamidade.gov]
Sent: Wednesday, March 13, 2013 3:39 PM
To: Pepe, Thomas F.
Cc: Centorino, Joseph (COE)
Subject: [BULK] Madison Square Solicitation and Cone of Silence (INQ 13-65)

Mr. Pepe,

The Cone of Silence is not violated for “*duly noticed* site visits to determine the competency of bidders.” See the Miami-Dade County Code at Sec. 2-11.1 (t)1.(a)(v).

Similarly, the community may provide input during the time the Cone of Silence is in effect as long as their comments are presented at a *duly noticed* public meeting. See the Miami-Dade County Code at Sec. 2-11.1 (t)1.(c)(i).

Sincerely,

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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Wednesday, March 13, 2013 8:28 AM
To: Frigo, Victoria (COE)
Cc: Steven J. Alexander
Subject: Madison Square Solicitation and Cone of Silence

Dear Ms. Frigo:

The City of South Miami's Community Redevelopment Agency ("SMCRA") published a solicitation for interested parties to submit letters of interest and qualifications for the selection of the most qualified entity to negotiate a contract for the design and development of the Madison Square project in the City of South Miami CRA area.

Presentations were made at the Monday, March 11, 2013, SMCRA meeting by the respondents to the solicitation ("Respondent(s)"). Some of the CRA members would like to visit the site of the development of a similar project constructed by one of the Respondents. They also want some community input, including the input of the CAC or CAA, and a work shop where the community will be invited, before making the selection of the most qualified Respondent.

I discouraged having private community input and cautioned them on having any communication during a site visit and I advised them today that the site visit, if any, must be duly noticed.

Do you see a problem with the citizen input and/or the site visit?

Very truly yours,

Thomas F. Pepe

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