

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Priscilla A. Thompson, City Clerk
FROM: Alejandro Vilarello, City Attorney
DATE: October 28, 2003
RE: Request for Legal Opinion: Principals as Lobbyist; Miami-Dade County Ethics Code; Minimum Standards
MIA No. 03-00017

This is in response to your request for a legal opinion wherein you asked, substantially, the following question:

WHETHER MIAMI-DADE COUNTY ETHICS CODE
PROVISIONS PERTAINING TO LOBBYIST, APPLY TO THE
CITY OF MIAMI?

The answer to your query is in the affirmative.

The Miami-Dade County Charter specifically provides that it (as an element of the Florida Constitution) empowers Miami-Dade County, *inter-alia*, to establish "minimum standards for all governmental units in the county for performance of any service or function." Consequently in 1973 Miami-Dade County (the "County") adopted an ordinance, designated and known as the "Miami-Dade County Conflict of Interest and Code of Ethics Ordinance" ("County Ethics Code"), which is codified as Section 2-11.1 of the Miami-Dade County Code. Section 2-11.1(a) of the County Ethics Code also provides that it shall constitute a *minimum standard* for municipal personnel, officials, agencies and entities. *See, Section 2-11.1(a), Miami-Dade County Code.*

An integral portion of the County's Ethics Code is Section 2-11.1(s), which specifically pertains to the County's regulation of Lobbyist. Said provision also reiterated its applicability to comparable municipal personnel, etc., via references to "County Personnel," which as discussed above, by definition, encompasses analogous municipal individuals and entities.

When originally adopted, the County Ethics Code's definition of "Lobbyist" did not include the "Principal"; however, said code was amended in 1991 by Miami-Dade County Ordinance Number 91-22 to specifically define and include a "Principal," as well as any agent, officer or employee of the Principal, as a "Lobbyist."

The City of Miami's lobbying ordinance, which was initially adopted in 1986 as Ordinance Number 10087, also specifically defined the term "Lobbyist," but clearly did not

include, nor has it been amended to include, the Principal within those individuals or entities defined therein as "Lobbyist." Inasmuch as the County's 1991 amendment has not been duplicated by the City of Miami, its City Clerks justifiably continued to follow the mandates and provisions of the City's Ordinance, as the City Clerk, unless instructed contrarily, might well be expected to do.

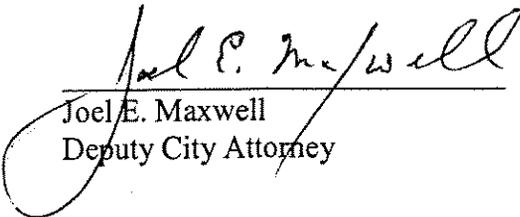
On May 6, 2003, Miami-Dade County once more amended its Lobbyist provisions by adopting Ordinance No. 03-107, which, again, dealt with the matter of the "Principal," pointedly including Principals within the ambit of the circumscribed "Lobbyist," but mitigating its effects on employees of the Principal. That ordinance, *inter alia*, also excluded a broad category of individuals from the definition of "Lobbyist." But the City of Miami is not bound to follow those *exclusions* because it is empowered to adopt and apply stricter lobbyist provisions, which any "inclusions" would constitute. Nor would the fee structure of the County Ethics Code apply to the City of Miami, because as a *regulatory fee* it is the prerogative of the individual municipalities to determine said fee in light of the actual expenses associated with the regulatory activity. (A copy of Miami-Dade County Ordinance No. 03-107 is attached hereto.)

In conclusion, this Office is of the opinion that the County Ethics Code does, in fact, supersede all similar but less-stringent provisions in municipal regulations pertaining to identifiably subordinated subject matter. Consequently, the long-standing City of Miami Lobbyist provisions of City Code Section 2-651, *et seq.*, which do not include the "Principal" as a Lobbyist, are pre-empted by the County Ethics Code's *minimum standards* which specifically includes the Principal, as well as specified employees of the Principal, as a Lobbyist.

Please govern your activities accordingly.

Attachment

PREPARED BY:


Joel E. Maxwell
Deputy City Attorney

Cc: Mayor and members of the City Commission
Joe Arriola, City Manager
Victor I. Igwe, Independent Auditor General

Approved  Mayor
 Veto _____
 Override _____

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ORDINANCE NO. 03-107

ORDINANCE AMENDING SECTION 2-11.1(s) OF CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO LOBBYING; AMENDING DEFINITION OF LOBBYIST; ELIMINATING ISSUE REGISTRATION REQUIREMENT AND FEE; PROVIDING FOR ANNUAL LOBBYIST REGISTRATION AND FEE; PROVIDING FOR AUTOMATIC SUSPENSION OF LOBBYISTS WHO FAIL TO FILE EXPENDITURE REPORTS BY SEPTEMBER 1 OF EACH YEAR; PROHIBITING USE OF CONTINGENCY FEES TO COMPENSATE LOBBYISTS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-11.1(s) of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

* * *

(s) *Lobbying.*

(1) >>(a)<<As used in this section, "County personnel" means those County officers and employees specified in Section 2-11.1(i)(2) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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>>(b) As used in this section, << "Lobbyist" means all persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission; (2) any action, decision, recommendation of >>the County Manager or<< any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee. "Lobbyist" specifically includes the principal[[;]] >>as well as any employee whose normal scope of employment includes lobbying activities<< [[as described above, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee]]. >>The term "Lobbyist" specifically excludes the following persons: attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications; expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings; any person who only appears as a representative of a neighborhood association without compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item; any person who only appears as a representative of a not-for-profit community based organization for the purpose of requesting a grant without special compensation or reimbursement for the appearance; and

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employees of a principal whose normal scope of employment does not include lobbying activities.<<

(2) All lobbyists shall register with the Clerk of the Board of County Commissioners within five (5) business days of being retained as a lobbyist or before engaging in any lobbying activities, whichever shall come first. Every person required to so register shall:

(a) Register on forms prepared by the Clerk;

~~[(b) Pay a registration fee of one hundred twenty-five dollars (\$125.00);]~~

~~[(e)]>>(b)<<~~ State under oath his or her name, business address~~[[,]] >>~~and<< the name and business address of each person or entity which has employed said registrant to lobby~~[[, and the specific issue on which he or she has been employed to lobby]]~~. If the lobbyist represents a corporation, >>the corporation<< shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five (5) percent or more ownership interest in such corporation, partnership, or trust. ~~[[Separate registration shall be required for each specific issue. Such issue shall be described with as much detail as is practical, including but not limited to a specific description (where applicable) of a pending request for a proposal, invitation to bid, public hearing number, etc. The Clerk of the Board of County Commissioners shall reject any registration statement which does not provide a description of the specific issue on which such lobbyist has been employed to lobby]].~~ Registration of all lobbyists shall be required prior to >>January 15 of each<< ~~[[October 1 of every even-numbered]]~~ year and each person who withdraws as a lobbyist for a particular client shall file an

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appropriate notice of withdrawal. The fee for >>annual<< ~~[[biennial]]~~ registration shall be >>four<< ~~[[five]]~~ hundred >>and ninety<< dollars >>(\$490.00)<< ~~[[(\$500.00)]. Initially, all lobbyists shall register on or before June 1, 1991. In addition, e]]>>E<< every registrant shall be required to state the extent of any business or professional relationship with any current person described in subsection (b)(1). The registration fees required by this subsection shall be deposited by the Clerk into a separate account and shall be expended for the purpose of recording>>,<< transcribing, administration and other costs incurred in maintaining these records for availability to the public. There shall be no fee required for filing a notice of withdrawal and the Board of County Commissioners may, in its discretion, waive the registration fee upon a finding of financial hardship.~~

[[d]]>>(c)<< Prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioners, signed by the principal or the principal's representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the Clerk of the Board at the point in time at which a lobbyist is no longer authorized to represent the principal.

* * *

(4) Any person who only appears as a representative of a not >>-<< for >>-<< profit corporation or entity (such as a charitable organization, ~~[[a neighborhood association]]~~, or a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect or

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contingent, to express support of or opposition to any item, shall register with the Clerk as required by this subsection, but, upon request, shall not be required to pay any registration fees.

- (5) Any person who appears as a representative for an individual or firm for an oral presentation before a county certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the County, all individuals who may make a presentation. The affidavit shall be filed by staff with the ~~[[e]]>>C<<~~ Clerk's office at the time the proposal is submitted. For the purpose of this subsection only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the Clerk's office and has paid all applicable fees.
- (6) (a) Commencing July 1, 1986, and on July 1 of each year thereafter, the lobbyist shall submit to the Clerk of the Board of County Commissioners a signed statement under oath, as provided herein, listing all lobbying expenditures in excess of twenty-five dollars (\$25.00) for the preceding calendar year. A statement shall be filed even if there ~~[[has]]>>~~ have ~~<<~~ been no expenditures during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events.
- (b) The Clerk of the Board of County Commissioners shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed as provided in subsection (s)~~[[({8})]]>>~~ (9) ~~<<~~, a fine of fifty dollars (\$50.00) per day shall be assessed for

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reports filed after the due date. Where a fine of fifty dollars (\$50.00) per day is assessed, the Ethics Commission shall not impose a fine as provided in subsection ~~[(w)]~~>>(z). Any lobbyist who fails to file the required expenditure report by September 1st shall be automatically suspended from lobbying until all fines are paid unless the fine has been appealed to the Ethics Commission.<<

(c) The Clerk of the Board of County Commissioners shall notify the Commission on Ethics and Public Trust of the failure of a lobbyist >>or principal<< to file a report and/or pay the assessed fines after notification.

(d) A lobbyist >>or principal<< may appeal a fine and may request a hearing before the Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Commission on Ethics and Public Trust within fifteen (15) calendar days of receipt of the notification of the failure to file the required disclosure form. The Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or part, based on good cause shown. The Commission on Ethics and Public Trust shall have the authority to adopt rules of procedure regarding appeals from the Clerk of the Board of County Commissioners.

>>(7) No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) an ordinance, resolution, action or decision of the County Commission; (2) any action, decision or recommendation of the County Manager or any County board or committee; or (3) any action,

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decision or recommendation of County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee.<<

[[~~(7)~~]]>>(8)<< The Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection (s). ~~[[The Clerk shall publish logs for the fourth quarter of fiscal year 1989-90 and the first quarter of fiscal year 1990-91 as soon as practicable after the effective date of this ordinance.]]~~ All logs required by this ordinance shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to Section 11.045, Florida Statutes.

[[~~(8)~~]]>>(9)<< The Ethics Commission shall investigate any person engaged in lobbying activities who may be in violation of this subsection(s). In the event that a violation is found to have been committed the Ethics Commission may, in addition to the penalties set forth in subsection ~~[[~~(u)~~]]>>(z)<<~~, prohibit such person from lobbying before the County Commission or any committee, board or personnel of the County as provided herein. Every lobbyist who is found to be in violation of this section shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

1st violation for a period of 90 days from the date of determination of violation;

2nd violation for a period of one (1) year from the date of determination of violation;

3rd violation for a period of five (5) years from the date of determination of violation;

A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or proposer has

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violated this section, either directly or indirectly or any combination thereof, on three (3) or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this section shall also render the contract voidable. The County Manager shall include the provisions of this subsection in all County bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of such failure illegal per se.

~~[(9)]~~ (10) All members of the County Commission, and all County personnel, shall be diligent to ascertain whether persons required to register pursuant to this subsection have complied. Commissioners or County personnel may not knowingly permit a person who is not registered pursuant to this subsection to lobby the Commissioner, or the relevant committee, board or County personnel.

~~[(10)]~~ (11) Except as otherwise provided in subsection (s) ~~[(8)]~~ (9), the validity of any action or determination of the ~~[[b]]~~ Board of ~~[[e]]~~ County ~~[[e]]~~ Commissioners or ~~[[e]]~~ County personnel, board or committee shall not be affected by the failure of any person to comply with the provisions of this subsection(s).

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

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Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: MAY 06 2003

Approved by County Attorney as
to form and legal sufficiency: RAG

Prepared by: GHS

Gerald K. Sanchez

Sponsored by Commissioner Katy Sorenson