


**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #08-002**

TO: Hector Mirabile, Interim Director
Community Development Department
FROM: Maria J. Chiaro, Interim City Attorney 
DATE: March 5, 2008
RE: Legal Opinion - City Transacting Business With A Company
Whose Executive Director Is A City Board Member

You have requested a legal opinion on substantially the following issue:

WHETHER THERE IS A PROHIBITED CONFLICT OF
INTEREST FOR A CITY BOARD MEMBER ("BOARD
MEMBER") WHO IS THE EXECUTIVE DIRECTOR OF A
COMPANY TRANSACTING BUSINESS WITH THE CITY?

The answer to the question is in the negative.

FACTS

According to the facts that have been presented to us, Board Member is also the Executive Director of a company ("Company"). The City is considering entering into an agreement with the Company to provide technical assistance to area businesses and organizations. Neither the Board Member nor his family has an ownership interest in the Company.

DISCUSSION

In order to determine whether the Board Member has a prohibited conflict of interest, it is necessary to analyze the provisions of the City Charter and Code ("City Charter" or "City Code") Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance ("County Code"), and Florida Statutes.

City Code

Chapter 2, Article V of the City Code states:

No person [officer, official, employee or member of any board, commission or agency of the City] shall enter into any contract or transact any business with the city or any person or agency acting for the city, or shall appear in representation of any third party before any board, commission or agency of which such person is a

member....Any such contract or agreement entered into or appearance made in violation of this section shall render the transaction voidable.

Section 2-612(a), City of Miami Code (2001).

The City's Code, in Section 2-612(b), also extends this prohibition to a public official's "spouse, son, daughter, parent, brother or sister."

The Board Member has a prohibited conflict of interest if the City transacts business with an entity in which he or his immediate family has an ownership interest. In the instant case, the Board Member is neither an officer nor board member of the Company. Further, neither the Board Member nor his family has an ownership interest in the Company. Therefore, under the City's Code provisions, the Board Member does not have a prohibited conflict of interest.

Miami-Dade County Code¹

Pursuant to Section 2-11.1(c) and (d), Miami-Dade County Code (2001), commissioners and board members of autonomous agencies of the City² have a prohibited conflict of interest if the City or the respective agency enters into a contract or transacts any business: 1) in which he/she or his/her immediate family has a direct or indirect financial interest, 2) through a firm, corporation, partnership or business in which he/she or a member of his/her immediate family has a direct or indirect controlling financial interest. A commissioner or a board member of an autonomous agency of the City also has a prohibited conflict of interest if either participates in any official action directly or indirectly affecting a business in which he/she or any member of his/her immediate family has a financial interest. Section 2-11.1(n), Miami-Dade County Code (2001).

Based on the facts presented, the City is not transacting business with a company that the Board Member or his immediate family has a direct or indirect financial interest. Therefore, the Board Member does not have a prohibited conflict of interest in this matter under the provisions of the Miami-Dade County Code.

¹ Official advisory opinions interpreting Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance are only rendered by the Miami-Dade County Commission on Ethics, pursuant to Section 2-11.1(v), Miami-Dade County Code (2001).

² Although Section 2-11.1 refers to the County, it is analogously applicable to all municipalities and its officials and employees. Section 2-11.1(1), Miami-Dade County Code (2001). Under the County Code's definition, the Board Member would be considered a commissioner and autonomous personnel and would be subject to such provisions of the County Code.

State Laws³

Section 112.311, Florida Statutes states:

no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest.

Section 112.313(4), Florida Statutes states:

(3) DOING BUSINESS WITH ONE'S AGENCY.—No...public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest.

The Board Member does not have a material interest in the company where he serves as Executive Director. The Board Member does not serve on the Company's board of director nor does he own an interest in the Company. Based upon the facts, the Board Member does not have a prohibited conflict of interest under these provisions of the Florida Statutes.

Federal Regulations

Federal regulations require recipients of Federal funds to comply with different sets of conflict of interest provisions. The first two provisions come from 24 CFR Parts 84 and 85. In general, no person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub-recipients who may exercise or have exercised any functions or responsibilities with respect to activities assisted with Federal funds or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from a federally-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereof, or the proceeds thereunder, either for themselves or for those with whom they have family or business ties during their tenure or for one year thereafter. The third provision comes from 24 C.F.R. §570.611 "no persons . . . who exercise or have exercised any functions or responsibilities with respect to Community Development Block Grants (CDBG)

³ For an official advisory opinion regarding these provisions, please contact the Florida Commission on Ethics.

activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the proceeds of the CDGB-assisted activity, either for themselves or those with whom they have a business or immediate family ties, during their tenure or for one year thereafter.”

The Board Member does not participate in the City’s decision-making process for allocating CDBG funds to agencies and/or individuals in the community. Further, the City board that the Board Member serves on does not provide the Board Member with the opportunity or access to obtain inside information pertaining to the allocation of CDBG funds by the City. Therefore, the Board Member does not have a prohibited conflict of interest in this matter under the provisions of 24 CFR Parts 84, 85 and 570.611.

CONCLUSION

Under the facts presented, the Board Member does not have a prohibited conflict of interest under the City’s Code, the County’s Code, Florida Statutes or Federal regulations.

PREPARED BY:

REVIEWED BY:



Kirk R. Menendez, Assistant City Attorney



Rafael O. Diaz, Assistant City Attorney

c: Mayor and Members of the City Commission