

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

TO: Commissioner Jeffrey L. Allen
FROM: Jorge L. Fernandez, City Attorney
DATE: May 18, 2005
RE: Conflict of Interest
MIA # 05-05

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

WHETHER A PROHIBITED CONFLICT OF INTEREST EXISTS WHEN AN INDIVIDUAL WHO IS A MEMBER OF THE CITY OF MIAMI PLANNING ADVISORY BOARD ("BOARD MEMBER") TRANSACTS BUSINESS WITH THE CITY OF MIAMI.

The answer to the question is yes.

FACTS

According to the facts that have been presented, a developer who is a principal in his company ("Board Member") serves as a member of the City of Miami Planning Advisory Board. The City is proposing entering into an agreement with Board Member's company ("Company") to convey to the Company certain City-owned properties for construction of affordable housing.

DISCUSSION

The following sections of the City Charter and Code ("City Charter" or "City Code") are pertinent to determining whether the Board Member has a prohibited conflict of interest.

City Code

Section 2-612 of the City of Miami Code (2001) states:

- (a) 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. However this section shall not apply to an

employee participating in federal economic development programs, the community development block grant assisted single family rehabilitation loan program, or the various affordable housing programs assisted through the home investment partnership program and state housing initiatives partnership program administered by the department of community development provided that the employee meets all criteria of the program and provided that the city manager approves the participation of the employee and that the employee is identified as being an employee of the city in applicable documents.

(b) The word "person" appearing in subsection (a) of this section shall include officers, officials and employees as set forth in section 2-611 hereof and the following family members of such "person": spouse, son, daughter, parent, brother or sister.

(c) The prohibition upon activity which is set forth in subsections (a) and (b) of this section shall remain in effect for a period of two years after the officer, official, or employee has left city service or terminated city employment.

The facts as described do not indicate that the transaction falls under any of the exemptions in Section 2-612 City of Miami Code (2001) as stated above.

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 City is transacting business with an entity in which he has an ownership interest. Therefore, under the City's Code, Board Member has a prohibited conflict of interest.

Pursuant to Section 2-614 City of Miami Code (2001), the exemptions to the foregoing conflict provisions may be waived by a 4/5th vote of the City Commission upon the following findings:

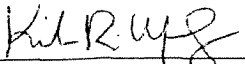
- (1) the transaction has been conducted pursuant to sealed, competitive bidding; or
- (2) the transaction has been conducted pursuant to a sealed proposal for architecture, landscape architecture, professional engineering or surveying per the Consultant's Competitive Negotiation Act; or
- (3) the property and services involved in the transaction are unique in nature and cannot be otherwise obtained; and
- (4) the proposed transaction is in the best interest of the City.

CONCLUSION


Under the facts presented, the Board Member does have a prohibited conflict of interest under the City's Code, which can be waived by a 4/5ths vote of the City Commission as stated above.

PREPARED BY:

REVIEWED BY:



Kirk R. Menendez
Assistant City Attorney



Maria J. Chiaro
Assistant City Attorney

c: Mayor and Members of the City Commission
Joe Arriola, City Manager
Members of the Planning and Advisory Board
Priscilla A. Thompson, City Clerk