

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION # 07-013**

TO: Robert Ruano, Director, Office of Sustainable Initiatives
FROM: Jorge L. Fernandez, City Attorney
DATE: September 10, 2007
RE: Conflict of Interest: Department Director Serving on Agency
Advisory Board
Matter ID No.: 07-1318

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

WHETHER THERE IS A PROHIBITED CONFLICT OF
INTEREST POSED BY A DEPARTMENT DIRECTOR
("DEPARTMENT DIRECTOR") WHO SERVES ON THE
ADVISORY BOARD OF AN AGENCY ("AGENCY") THAT
PROVIDES GRANT FUNDING TO THE CITY.

The answer to the question is in the negative.

FACTS

According to the facts that have been presented to us, the Department Director has been asked to serve on the advisory board ("Advisory Board") of an Agency that provides grant funding to the City. The Advisory Board does not have decision-making authority over the Agency but serves only as an advocacy board focused on working across sectors to provide "solutions for cities" through direct guidance to cities and by increasing and building partnerships between members. Further, the Department Director will neither enter into a contract with nor receive financial compensation from the Agency.

DISCUSSION

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

I. 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 Department Director has a prohibited conflict of interest if the City or his agency transacts business with an entity in which he or his immediate family has an *ownership interest*. In the instant case, neither the Department Director nor his immediate family has an ownership interest in the Agency. Therefore, under the City's Code, the Department Director does not have a prohibited conflict of interest.

II. Miami-Dade County Code

Pursuant to Section 2-11.1(c) and (d), Miami-Dade County Code (2001), no person shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of his immediate family has a *controlling 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.

Based on the facts presented, neither the Department Director nor his immediate family has a controlling interest, direct or indirect, in the Agency. Therefore, under Section 2-11.1(c) and (d), Miami-Dade County Code (2001), the Department Director does not have a prohibited conflict of interest in this matter.

III. State Laws

Section 112.311(5), Florida Statutes states in pertinent part:

"... 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(3), Florida Statutes states in pertinent part:

DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or 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. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision.

Section 112.313(7)(a), Florida Statutes states in pertinent part:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

Section 112.313(3), Florida Statutes, prohibits a public employee, acting in his official capacity, from directly or indirectly purchasing services from a business entity in which the employee owns a material interest, or in which the employee is an officer, partner, director, or proprietor. In the instant case, since the Department Director is not purchasing services from the Agency, directly or indirectly, there is no conflict prohibited by the first sentence of this provision.

The second sentence of the above-cited provision prohibits an employee of the City from acting in his private capacity to sell any services to the City or any agency of the City. This provision does not apply to the present situation because the Agency does not sell any services to the City but strictly provides the City with grant funding.

As to Section 112.313(7)(a), Florida Statutes, the first part of the statute prohibits a public employee from having an employment or contractual relationship with any business entity which is subject to the regulation of, or doing business with, the City. There is nothing to suggest that the City regulates the Agency. Although the Agency does business with the City through the issuance of grants to the City, the Department Director does not have a an employment or contractual relationship with the Agency. Therefore, there is no violation of the first portion of Section 112.313(7)(a), Florida Statutes.

The remaining provision in Section 112.313(7)(a), Florida Statutes, prohibits an employee from having any employment or contractual relationship which creates a continuing or frequently recurring conflict between his private interests and his public duties. In the instant case, the Department Director has no employment or contractual relationship with the

Agency. Further, the Agency does not purchase or sell any services with the City. As long as the Department Director does not have an employment or contractual relationship with the Agency and the Agency neither purchases services from or sells services to the City, there is no prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes.


CONCLUSION

Based on the analysis of the above referenced city, county and state regulations, we find that there is no prohibited conflict of interest where the Department Director serves, without a contract and without financial compensation, on the advisory board of an Agency when that Agency neither purchases services from nor sells services to the City.

Should you have any questions, please feel free to contact me at (305) 416-1800.

KRM

PREPARED BY:



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REVIEWED BY



Julie Bru, Deputy City Attorney