



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 19, 2010

Robert Weisman
Palm Beach County Administrator
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 10-003
Urban Design Kilday Studios

Dear Mr. Weisman,

The Commission on Ethics considered your request, reviewed your factual submission of May 19, 2010, listened to a public presentation of issues given by staff members of the Facilities Development and Operations Department (FDO) on June 8, 2010, as well as an additional submission by FDO staff on July 13, 2010, and rendered its opinion at a public meeting held on July 15, 2010.

YOU ASKED in your e-mail of May 19, 2010 whether Urban Design Kilday Studios (UDKS) was in violation of the Palm Beach County Code of Ethics by contracting with the Facilities Development and Operations Department (FDO) to provide various land planning and development services in support of County projects as an extension of County Staff while at the same time representing private sector clients on development issues in Palm Beach County.

IN SUM, the Commission on Ethics opined that a consultant retained by a County Department is not an "Official or employee" as defined in Sec. 2-422 of the code and is therefore not subject to the prohibitions enumerated in sec. 2-433(c)(Prohibited contractual relationships)

THE FACTS as we understand them are as follows:

The Facilities Development and Operations Department (FDO) hires consultants to perform a wide range of development due diligence and property evaluation regarding the suitability of a property in development for a County use (e.g., fire station, library, jail facility). Currently, three companies, chosen for a three year period by an RFQ process, are alternately hired to lead a team of sub-consultants to research and report on such suitability issues as: compliance with regulatory codes; soil and environmental testing; traffic analysis; wetlands assessment; storm water management and any other issues that affect the appropriateness of a selected site for its intended use. Work product is reviewed by County staff for errors in calculation or application. Outside consultants are used by FDO as a cost saving measure as program management is more cost effective than maintaining a staff of experts in



Palm Beach County Commission on Ethics

CommissionersEdward Rodgers, *Chair*Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

planning and design construction. Property acquisition and management remains a function of County staff.

The private companies retained by FDO, including lead and sub-consultants, also do similar consulting work for private clients. In their representation of private clients these companies rarely interact with FDO. However, actions taken on behalf of their private clients generally involve appearing and advocating before the County Planning, Zoning and Building Department, land use or zoning bodies or the Board of County Commissioners (BCC) as well as interaction with regulatory staff.

It should also be noted that on public projects, once work product is submitted to FDO, the private consultants do interact with regulatory staff and sometimes appear before or otherwise interact with the Land use or zoning bodies or the BCC alongside county staff. According to FDO, the purpose of their appearance with FDO is to assist in the translation of project details to staff and ultimately to present their findings to the appropriate board or commission and not for purposes of advocacy.

IN SUMMARY, Urban Design Kilday Studios, as a county consultant, is not subject to code of ethics s. 2-443(c) *Prohibited contractual relationships*. The Ethics Commission recognizes that there is a perception problem when a consultant performs identical functions for both private and public clients before the same regulatory entities and that county management should continue to take appropriate steps to minimize these perceptions.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724, should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/gal