



MEMORANDUM

Agenda Item No. 11(A)(29)

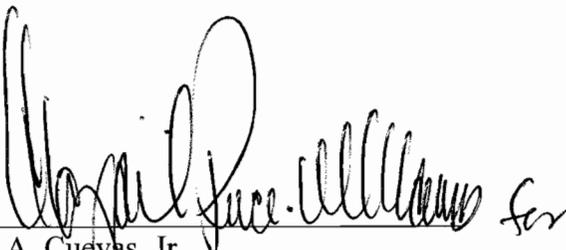
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution regarding a conflict
waiver request by Gomez Barker
Associates, Inc. related to state
lobbying on behalf of Miami-Dade
County

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Dennis C. Moss.



R. A. Cuevas, Jr.
County Attorney

RAC/cp



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(29)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Mayor's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(29)
6-30-09

RESOLUTION NO. _____

RESOLUTION REGARDING A CONFLICT WAIVER
REQUEST BY GOMEZ BARKER ASSOCIATES, INC.
RELATED TO STATE LOBBYING ON BEHALF OF MIAMI-
DADE COUNTY

WHEREAS, Gomez Barker Associates, Inc. (“Gomez Barker”) is a member of the state lobbying team for Miami-Dade County (the “County”) as a subcontractor to the prime contract with Rutledge, Ecenia, Purnell & Hoffman, P.A.; and

WHEREAS, Gomez Barker submitted an email to the County, a copy of which is attached, related to its representation of certain Miami-Dade cities on SB 1000; and

WHEREAS, SB 1000 provides that the governing authority of a county may levy, by ordinance, a discretionary sales surtax of up to 1 percent for emergency fire rescue services upon voter approval, with reductions in ad valorem taxes levied corresponding to the revenue raised by the sales surtax; and

WHEREAS, an amendment was run to SB 1000 providing that any county that already imposed two separate discretionary surtaxes may not levy the fire rescue surtax; and

WHEREAS, this amendment had the effect of excluding Miami-Dade County from SB 1000 and as such not allowing Miami-Dade County the authority to impose a sales surtax for fire rescue services; and

WHEREAS, SB 1000 passed the Legislature with this amendment and is currently pending approval by the Governor; and

WHEREAS, upon being notified by the County of the conflict, Gomez Barker promptly ceased working on the amendment and SB 1000; and

WHEREAS, on May 9, 2000, the Board passed Ordinance No. 00-64, which provided that no person or entity, whether an individual, firm, partnership or corporation, which received compensation from the county for lobbying on behalf of the county or any of its agencies or instrumentalities at either the state, national or municipal level shall represent any entity in any forum to support a position in opposition to a position of the county unless the Board grants a specific waiver for a specific lobbying activity; and

WHEREAS, the failure of any county contract lobbyist to comply with the provisions of Ordinance No. 00-64 shall result in either or both of the following:

- (1) That lobbyist's contract with the county is voidable by the county;
- (2) A prohibition, for a period of up to three years, as determined by the Board of County Commissioners, on the lobbyist's entering into a lobbying contract with the county; and

WHEREAS, the County's lobbying contracts provide that the contract lobbyist must advise the County of any position in opposition to a County position that the contract lobbyist Consultant or any employee, partner, or subcontractor desires to take and request a waiver of such conflict before the Board of County Commissioners prior to taking such a position, and further states that:

A position in opposition to a County position may take the form of an adverse policy position or fiscal impact on the County, either direct or indirect. A position in opposition to a County position is not limited to a position that conflicts with an express provision of the legislative package adopted by the Board of County Commissioners. It may also arise in other areas. Not every County interest can be anticipated or enumerated in the County's legislative package, and issues arise and change over the course of the legislative process. It is incumbent on the Consultant and its employees, partners, and subcontractors to remain mindful of the County's policy and fiscal interests and positions vis-a-vis other clients. If an actual or perceived conflict arises, the Consultant and/or subcontractor must advise the Director of the Office of Intergovernmental Affairs immediately in writing and seek a waiver of the conflict before the Board of County Commissioners prior to representing the adverse interest or position; and

WHEREAS, the County's lobbying contracts provide that the Board may take, in its sole discretion, any action regarding a waiver of request, including but not limited to the following:

(1) Grant a waiver and allow the lobbying firm to continue to represent both the County and the other client on all issues, including the issue on which a conflict or potential conflict exists;

(2) Refuse to grant a waiver and require the lobbying firm to choose between representing either the County or the other party, requiring the lobbying firm to entirely give up its representation either of the County or the other party;

(3) Refuse to grant a waiver and void the County's contract with the lobbying firm;

(4) Grant a limited waiver and allow the lobbying firm to continue to represent both the County and the other party under whatever limitations or restrictions the County, in its sole discretion, determines to be appropriate,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board _____ the request by Gomez Barker Associates, Inc. for a conflict waiver pursuant to its representation of Miami-Dade County in Tallahassee.

The Prime Sponsor of the foregoing resolution is Chairman Dennis C. Moss. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

- | | |
|----------------------|---------------------------------|
| | Dennis C. Moss, Chairman |
| | Jose "Pepe" Diaz, Vice-Chairman |
| Bruno A. Barreiro | Audrey M. Edmonson |
| Carlos A. Gimenez | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Dorrin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

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The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Jess M. McCarty

McCarty, Jess (CAO)

From: Fausto Gomez [fgomez@gomezbarker.com]
Sent: Wednesday, April 29, 2009 8:39 PM
To: McCarty, Jess (CAO); Rasco, Joe (OIA); gary@reuphlaw.com; Marante, Roly (DIST6)
Subject: Re: SB 1000 - Fire/rescue sales surtax

Jess;

This will confirm that upon your first advising me that Miami-Dade County had established a position on the subject legislation and/or amendment, my team and I immediately ceased any and all activity on that matter.

Prior to your notice we were unaware that the County had any position on this. The bill was sponsored by the Palm Beach County Fire Union and neither the legislation or any related subject were a part of Miami-Dade's legislative program, the subject of any Commission Resolution, listed on any documents, or discussed in any of our legislative team meetings. In fact, I understand that another member of Miami-Dade's lobbying team was also tasked to secure the amendment and that subsequent to your speaking with him he also immediately withdrew from the issue. I'm confident that he too was unaware of Miami-Dade's interest.

As evidenced by the above, there is and has been no disagreement in our representation of Miami-Dade. We value our relationship with the County and apologize for any inadvertent misunderstanding.

Fausto

----- Original Message -----

From: McCarty, Jess (CAO) <JMM2@miamidade.gov>
To: Fausto Gomez
Cc: gary@reuphlaw.com <gary@reuphlaw.com>; Rasco, Joe (OIA) <JRASCO@miamidade.gov>
Sent: Wed Apr 29 08:41:51 2009
Subject: SB 1000 - Fire/rescue sales surtax

Hi Fausto,

This email confirms our conversation yesterday in which you indicated you had immediately stopped working on the language advanced by certain cities in Miami-Dade that would exclude Miami-Dade County from the provisions of SB 1000 and that you would submit a letter related to your representation of those cities regarding the language on SB 1000 (or similar language elsewhere). We need the letter as soon as possible, by the end of today if at all possible.

Thanks and please let me know if you have any questions.

Jess

Jess McCarty, Assistant County Attorney
Miami-Dade County Attorney's Office
Suite 2810 Stephen P. Clark Center

111 N.W. 1st Street
Miami, Florida 33128
direct line: 305-375-1634
fax: 305-375-5634
cell: 305-979-7110
<<mailto:jmm2@miamidade.gov>> jmm2@miamidade.gov

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6/4/2009

GÓMEZ BARKER ASSOCIATES, INC.

Government Relations & Public Affairs Counselors
2350 Coral Way, Suite 301
Miami, Florida 33145
Telephone (305) 860-0780
Facsimile (305) 860-0580
www.gomezbarker.com

May 6, 2009

OFFICE OF

MAY 11 2009

INTERGOVERNMENTAL AFFAIRS

Mr. Joe I. Rasco
Director, Office of Intergovernmental Affairs
Miami-Dade County
111 N. W. 1st Street
Miami, Florida 33128

Dear Mr. Rasco:

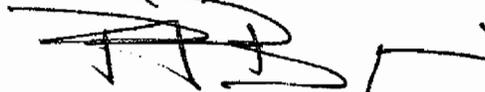
This is in response to your telephone call this afternoon requesting a letter from this firm with regard to SB1000. I received an e-mail from Mr. Jess McCarty on April 29th seeking confirmation that upon his discussing it with me my team and I had ceased all activity with regard to this bill and any amendments to it. I responded to him by e-mail, also on April 29th, that we had. I received no further instructions.

As you may know, on April 28th I was contacted by Mr. McCarty who informed me that Miami-Dade County had now developed a position on SB1000, the Fire Surtax legislation sponsored by Sen. Mike Fasano (the companion bill was HB365 by Rep. Ed Hooper). This was the first time that I had been advised of such, and upon Mr. McCarty letting me know, my team and I immediately ceased any and all activity with regard to the legislation and any amendment to same. I think it important to note that for the last two legislative years this bill was promoted by the Palm Beach County Fire Union and that during the 2008 legislative session it was also introduced and considered. The sponsors and bill numbers at that time were Sen. Mike Fasano (SB2298) and Rep. Shelley Vana (HB891). During the past two years I do not recall Miami-Dade enunciating any position with regard to the legislation or having any discussion with the lobbying team about it.

As such, prior to Mr. McCarty's notice we were unaware that Miami-Dade had any position on this. Neither the legislation nor any related subject were a part of the County's legislative program, the subject of any Commission Resolution, listed on any lobbying documents, or discussed in any of our legislative team briefings. And since this bill was widely know and debated in the 2008 legislative year, and still Miami-Dade remained silent, it did not appear to be an issue of import to the County (particularly since it is revenue neutral). In fact, I understand that another member of Miami-Dade's lobbying team was instructed by a municipality to defeat this legislation and that subsequent to Mr. McCarty's speaking with him he also immediately withdrew from the issue. I'm confident that this person was also unaware of Miami-Dade's interest.

As evidenced by the above, there is and has been no disagreement in our representation of Miami-Dade. We value our relationship with the County and apologize for any inadvertent misunderstanding.

Sincerely,



Fausto B. Gomez