MEMORANDUM

Agenda Item No. 1(J)1

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: February 2, 2016

FROM: Honorable Harvey Ruvin, Clerk
Circuit and County Courts

Christopher Agrippa, Director
Clerk of the Board Division

SUBJECT: Conflict Waiver Request
Pittman Law Group, P.L.
Representing Uber
Technologies, Inc.

Pursuant to the provisions of Resolution R-1017-10, adopted at the October 5, 2010, Miami-Dade County Board of County Commissioners' meeting, the attached Conflict Waiver Request received from Pittman Law Group, P.L., in representation of Uber Technologies, Inc., is presented for the Board's consideration.

The waiver request of Mr. Sean Pittman, Attorney, Pittman Law Group; the Memorandum from Mr. Joseph M. Centorino, Executive Director and General Counsel, Miami-Dade County Commission on Ethics and Public Trust; and the report and recommendation of the Ethics Commission's staff, are attached for your information.

CA/sm
Attachment

Agrippa, Christopher (COC)

Subject: FW: Notice of conflict - conflict waiver request, state lobbying contracts

From: McCarty, Jess (CAO)
Sent: Wednesday, January 20, 2016 2:01 PM
To: Agrippa, Christopher (COC); Knowles, Keith (COC)
Subject: FW: Notice of conflict - conflict waiver request, state lobbying contracts

From: Sean Pittman [mailto:sean@pittman-law.com]
Sent: Wednesday, January 20, 2016 12:02 AM
To: McCarty, Jess (CAO)
Cc: Ron Book
Subject: Notice of conflict

Dear Attorney McCarty,

I hope this message finds you well. For the past 13 years, Pittman Law Group, P.L. has had the pleasure of working with the Miami-Dade County Legislative Affairs Team. We have greatly enjoyed our time working with you and the Commission on some of The counties most important issues and challenges. Please know we value our relationship with the county and hope to continue providing exemplary services in Tallahassee for many years to come.

This letter is intended to notify you that our firm was recently hired to represent Uber Technologies, Inc. Similar to Miami Dade, We have been retained to provide state lobbying services during legislative session in Tallahassee. Please consider this letter as a conflict waiver request for Board of County Commission consideration.

We are honored to work with the Miami-Dade County Legislative Affairs Team and remain dedicated to our representation. We hope that you will grant our waiver request and allow us the opportunity to continue our service and relationship to Miami Dade. Please do not hesitate to call (850) 216-1002 or e-mail me directly at sean@pittman-law.com with any questions or concerns.

Respectfully submitted,

Sean Pittman
Attorney - For the firm

Miami-Dade County
Commission on Ethics and Public Trust

Memo

To: Miami-Dade County Commission

From: Joseph M. Centorino, Executive Director and General Counsel, Miami-Dade Commission on Ethics and Public Trust

Date: January 29, 2016

Re: Pittman Law Group Lobbyist Conflict Waiver Request

COE No.: K16-004

On January 20, 2016, a conflict waiver request was submitted to the County from Pittman Law Group in connection with its representation of Uber Technologies, Inc. On January 20, 2016, this request was forwarded to the Commission on Ethics for review as required by Resolution No. R-632-10. The attached report by Commission staff has concluded that a conflict is presented by Pittman Law Group's representation of Uber Technologies, Inc., and Miami-Dade County. Accordingly, this agency's recommendation is that a waiver should not be granted to Pittman Law Group.

Biscayne Building
19 W. Flagler St., Suite 820
Miami, FL 33130
Phone (305) 579-2594
Fax (305) 579-0273

Commission on Ethics & Public Trust

Miami-Dade County

Memorandum

To: Joseph M. Centorino, Executive Director
Commission on Ethics and Public Trust

Date: January 29, 2016

From: Michael Murawski, Advocate
Commission on Ethics and Public Trust

Re: Pittman Law Group Lobbyist Conflict Waiver Request

COE No.: K16-004

Background:

On January 20, 2016, attorney Sean Pittman (Pittman), of the Pittman Law Group (Pittman Group), notified Assistant County Attorney Jess McCarty (McCarty) that his firm had been retained by Uber Technologies Inc. (Uber), a private corporation, to provide lobbying services during the 2016 session of the Florida Legislature.

The Pittman Group is one of seven firms contracted by the Board of County Commissioners (BCC) to lobby in support of the County's interests in Tallahassee, and so the firm is required to request and receive a conflict of interest waiver from the BCC, pursuant to County Ordinance 2-11.1.2., which states in part: *"[N]o person or entity, whether an individual, firm, partnership or corporation, that receives compensation from the county for lobbying on behalf of the county or any of its agencies or instrumentalities at the federal, state or local level shall represent any entity in any forum to support a position in opposition to a position of the County unless this Board first grants a specific waiver for the representation. A position in opposition to a County position is not limited to a position that conflicts with an express provision of the County's legislative package. An actual or perceived conflict may also arise in other areas."*

The Miami-Dade County Commission on Ethics and Public Trust has been requested to conduct a review of the Pittman Group waiver request.

Investigation:

The COE's fact-finding inquiry included:

- Review of Pittman Group's conflict of waiver request letter dated January 20, 2016.
- Review of 2016 State Legislative Priority Assignments; State Resolution Assignments; Bill and Issue Assignments; State Departmental Assignments and General Issue Area Assignments. This document apportions lobbying work among the County's lobbying contractors. Provided by McCarty.
- List of the County lobbying assignments for Pittman Group. Provided by Pittman.
- Legislative bill analyses for HB 509 and SB 1118.
- Interviews

  1) McCarty;
  2) Pittman;
  3) Raul Gonzalez (Gonzalez), interim division chief Miami-Dade County's Regulatory and Economic Resources Department (RER);
  4) Mario Merlote (Merlote), Miami-Dade County Chief of Intergovernmental and Internal Affairs for RER.

Analysis:

- Uber Technologies Inc. describes itself as an "American international mobile ride request company," headquartered in San Francisco. The company is estimated to be worth $62.5 billion. It operates in 58 countries and over 300 cities. (Source: Wikipedia)
- Uber contracts with private car owners to transport customers who request point-to-point rides, at pre-arranged prices, through a smartphone-based application.
- In many jurisdictions, Uber and similar companies, collectively identified by Florida as Transportation Network Entities (TNEs), began operations without prior government approval. The TNEs thus have operated in direct competition with taxi and limousine services, but without the regulatory constraints imposed upon taxis and limousines.
- Different jurisdictions have employed varying strategies in an attempt to either stop TNEs from operating, or bring them under some degree of regulation. Since taxi and limousine regulation in Florida is a county or municipal responsibility, regulation of TNEs has thus far been handled at the county or municipal level. However, beginning in 2015, TNEs, and Uber specifically, have sought to have Florida's Legislature pre-empt local authority to regulate or ban TNEs from operating, shifting that power to the state.

- This effort failed in Tallahassee during the 2015 session. In this year's Legislative session, two bills have been introduced regarding TNEs. The House bill, originally HB 509, sponsored by Rep. Matt Gaetz (R-Fort Walton Beach) would preempt all local regulation of TNEs, giving full regulatory responsibility to the state, except for limited authority reserved to airports for staging areas. The Senate bill, originally SB 1118, sponsored by Sen. David Simmons (R-Longwood), would establish State regulation only over the insurance regulations that would apply to TNEs.

- The Pittman Group, based in Tallahassee, currently does lobbying work by contract for Miami-Dade County, under its own name, and also as a subcontractor of Ron L. Book P.A., a Miami-based law firm.

- The Pittman Group has been retained by Uber to represent its interests during the 2016 session of the Florida Legislature, specifically to lobby in favor of HB 509 and SB 1118 (and the successor titles of those bills). The Miami-Dade County code requires the Pittman Group, as a county contractor, to petition the BCC for a conflict of interest waiver. Sole authority to grant such a waiver rests with the BCC.

- McCarty said the County **opposes** HB 509, as it generally has opposed most such preemption bills. This opposition is expressed in County Resolution R-781-15 – "Resolution Approving 2016 State Legislative Guiding Principles, 'Urging' Resolutions Adopted by the Board" at Page (handwritten) 17: "[the County] oppose[s] legislation that would preempt or prevent local governments from accomplishing planning objectives protected under local home rule authority."

- Pittman Group, as a county contractor, thus meets the definition of an entity that "*receives compensation from the county for lobbying on behalf of the county or any of its agencies or instrumentalities at the federal, state or local level,*" as defined in County Ordinance 2-11.1.2. Furthermore, by representing a client who seeks the passage of HB 509, which the County specifically opposes, Pittman Group also meets the test of "*represent[ing] any entity in any forum to support a position in opposition to a position of the County,*" as defined in the same ordinance. It should be noted that the wording of the ordinance is broad: It not only limits contractors from lobbying on the opposite side of the same issue the contractor was hired by the County to support; it states that a lobbying contractor who is hired to represent the County on *any* issue may not lobby against the County's position on *any other* issue, without the prior consent of the BCC.

- McCarty said that to his knowledge, the County has not expressed support or opposition specifically for SB 1118. It is conceivable, but not known, that the BCC would endorse state regulation of TNE insurance guidelines should the BCC approve local TNE operation.

- County Ordinance 2-11.1.2 does not generally prohibit Pittman Group from representing Uber. This is because Pittman Group's lobbying responsibilities for the County, as determined by the County Attorney's office, do not appear to include, overlap, or impact any aspect of TNE or taxi industry operation, insurance thereon, or

airports. However, the ordinance *does* prohibit a County lobbying contractor from representing *any* client who supports HB 509, because that measure calls for preemption of local authority for TNEs, a position the County opposes, unless the BCC grants a waiver.

- Principal Sean Pittman states that his firm's contract with Uber runs for one year, and applies only to the above-noted bills for the current Legislative session. Pittman states that as of January 26, 2016, he had begun consultations with Uber but had not commenced lobbying activities.

- The Miami-Dade County Commission on January 20, 2016, passed on first reading a proposed ordinance that would legalize and regulate TNE operation in the County. As of the date of this memorandum, The BCC has planned a workshop and committee hearing, the latter for March 15, to further consider the proposal. The legislation is sponsored by Commissioner Esteban Bovo, Jr., and supported by Miami-Dade Mayor Carlos Gimenez. Prospects for passage of this legislation cannot be determined, but clearly County elected officials are not categorically opposed to the Uber business model operating locally.

- Neither Legislative proposal backed by Uber has a matching companion bill in the opposite chamber. The Florida House passed HB 509 by a supermajority vote on January 27, 2016, but the prevailing expectation is that the Senate will not hold a vote on it. McCarty said the prospects that SB 1118 will become law this session were similarly slim.

Conclusion

Pursuant to County Ordinance 2-11.1.2, "no person or entity that 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."

Additionally, County Resolution No. 56-10 requires all County contract lobbyists to obtain a waiver from the Board for any actual or perceived conflicts of interest.

Pittman Group should not be given a waiver to lobby on behalf of Uber regarding HB 509. The County specifically opposes the State pre-emption issue and it would be a direct conflict for Pittman Group to lobby in support of that legislation.

Similarly, Pittman Group should be denied a waiver to lobby on behalf of Uber regarding SB1118. It is conceivable, but not known at this time; whether the BCC would endorse state regulation of TNE insurance guidelines should the BCC approve local TNE operation. Given the current state of uncertainty and flux in this area we recommend the more cautious approach of denying the waiver request. This recommendation is consistent with our January 2015 recommendation, adopted by the BCC, denying a waiver to Ballard Partners who also sought to represent Uber.