



954-357-7600 · FAX 954-357-7641

MEMORANDUM

TO: Mayor Marty Kiar

FROM: Andrew J. Meyers, Chief Deputy County Attorney

DATE: June 2, 2016

**RE: Quarterly Outside Employment Disclosure
CAO File: 16-08E (Financial Disclosure)**

The Broward County Elected Official Code of Ethics (the "County Ethics Code") requires county and municipal elected officials to disclose outside employment, and remuneration received therefrom, on a quarterly basis. Section 1-19(c)(2)b., Broward County Code. You are employed by Martin David Kiar, Attorney at Law LLC (the "LLC"). In 2014 and 2015, the LLC earned a net income of \$6,715 and \$2,740, respectively. The 2014 LLC net income was not actually disbursed by the LLC and received by you until the first quarter of 2015. Likewise, the 2015 net income was not actually disbursed by the LLC and received by you until the first quarter of 2016. Accordingly, you have previously disclosed the remuneration on the forms covering the first quarters of 2015 and 2016. You have asked whether you should have, instead, disclosed the remuneration as having been received by you during the calendar years in which the net profit was earned by the LLC (2014 and 2015). If so, you have stated that you will file amended disclosure forms.

For the reasons stated below, it is our opinion that it was proper for you to disclose the remuneration in the report covering the quarter in which it was actually received by you, and likewise would have been proper for you to have disclosed it in the report covering the last quarter of the calendar year in which the LLC earnings occurred. Therefore, while you may file amended disclosure forms, you are not required to do so.

In reaching this conclusion, we contrast the disclosure requirement under the County Ethics Code from the annual state Form 6 disclosure which you, as a County Commissioner, are also required to file. According to the Form 6 instructions, disclosable income is defined to mean "'gross income' for federal income tax purposes." For federal income tax purposes, the net profit of a pass-through entity wholly-owned by a reporting individual (such as the LLC here) is considered income in the year in which it is earned by the entity, whether or not the net profit is actually distributed to the reporting individual during that year. See e.g. Schedule C to Internal Revenue Service Form 1040. Thus, for

Mayor Marty Kiar

June 2, 2016

Page 2

purposes of a Form 6 disclosure, the net profit of a pass-through entity wholly-owned by a reporting individual should be disclosed as income for the year in which the net profit was earned.

In contrast, the County Ethics Code requires disclosure of remuneration "received" from outside employment, and does not define "receipt" by reference to what is considered income for federal income tax purposes. Thus, remuneration could be considered "received" at the time of actual receipt by the reporting individual (which is consistent with your filed disclosure forms). Alternatively, if net income is not actually distributed by a pass-through entity during the calendar year in which it is earned, remuneration could be considered "received" during the fourth quarter of the year in which the net profit is earned by the entity, consistent with the Internal Revenue Code and Form 6 instructions. While either approach is permissible, the latter approach has the advantage of making clearer that the income disclosed on a Form 6 is consistent with the remuneration disclosed on the County quarterly reports.

In conclusion, it is our opinion that your filed disclosures are consistent with the County Ethics Code, but you have the option of filing amended disclosures to show the remuneration as being received during the last quarter of the calendar years (2014 and 2015) in which the net profit was earned by the LLC.

If we can be of further assistance regarding this matter, please let us know.

/s/ Andrew J. Meyers

Chief Deputy County Attorney