



## **PROBABLE CAUSE MEMORANDUM**

To: Miami-Dade County Commission on Ethics and Public Trust

From: Michael P. Murawski, Advocate

Re: C15-23 (Kienzle v. Ross)

Date: December 2015

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### **Recommendation:**

There is No Probable Cause to support a charge of unregistered lobbying against respondent Evan Ross.<sup>1</sup>

### **Background and Investigation:**

Complainant, Stephanie Kienzle (Kienzle) filed this Ethics Complaint against Respondent, Evan Ross (Ross). Kienzle alleges that she was told by Jason Neal (Neal), a representative of Waste Management of Florida, Inc. (WMI), that Ross is a paid consultant for WMI and had lobbied officials of the City of North Miami Beach (the City) on behalf of WMI in connection with the City's RFP for the privatization of the City's sanitation department.

By way of background, in 2012, the City issued an RFP (RFP 2012-04) to outsource its sanitation and recycling services. Under RFP 2012-04, the selection committee and the City Manager recommended awarding the contract to a company called Waste Pro. At a council meeting held on June 17, 2014, Mayor George Vallejo, and Councilmembers Barbara Kramer and Marlen Martell voted to negotiate a contract with Waste Pro, however the remaining council members voted against and the motion failed 4-3. The council

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<sup>1</sup> Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics and Public Trust (COE) to conclude that Respondent should be charged with violating Section 2-11.1(s) entitled "Lobbying."

then decided to re-bid the RFP (RFP 2014-08). This time the winning bidder was WMI. WMI was awarded the contract and it has been duly executed.

**Relevant Ordinance:**

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-11.1(s) (2) *Lobbying*.

As used in this section, "Lobbyist" means all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat or modification of (1) ordinance, resolution, action or decision of the [City] Commissioners; (2) any action, decision, recommendation of the [City] Manager or any [City] board or committee; or (3) any action, decision or recommendation of [City] personnel during the time period of the entire decision making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the [City] Commission, or a [City] board or committee.

The term "Lobbyist" specifically excludes...employees of a principal whose normal scope of employment does not include lobbying activities. All lobbyists shall register with the City Clerk within three (3) business days of being retained as a lobbyist or before engaging in any lobbying activities, whichever shall come first.

A review of the City's lobbyist registration lists for the years 2011 – 2015 reflect that Ross did not register to lobby on behalf of WMI for either RFP. A COE investigator interviewed several City officials.

The Chief Procurement Officer for the City is **Brian O'Connor** (O'Connor). O'Connor stated that he knows Ross from seeing him around and just saying hello and goodbye to each other. O'Connor said that he has not ever had a discussion with Ross on any matter, including the sanitation bids. O'Connor said that he has no knowledge that Ross may have been working for WMI. O'Connor knows Ross is the lobbyist for CH2M Hill Engineers (for which Ross is properly registered). To the best of his knowledge, the lobbyists for WMI are Jason Neal and Alfredo Gonzalez (Gonzalez), who are properly registered. O'Connor said that he was not lobbied by Ross on anything during the bidding process of the subject RFPs.

The City's Public Works Director, **Esmond Scott** (Scott) was stated that he had no conversation with Ross.

They have not spoken on any matter, other than saying hello and goodbye. Ross has never lobbied him and, in fact, he was not lobbied by anyone in connection with the sanitation RFPs.

**City Manager Ana Garcia** similarly advised that Ross had only contacted her with regard to CH2M Hill and a study to be done on the City's water plant.

City elected officials were also questioned. **Mayor George Vallejo** advised that he did not have any first-hand knowledge of Ross lobbying on behalf of WMI. Vallejo said that he does not think he was lobbied by anyone from WMI.<sup>2</sup>

**Councilman Anthony DeFillipo**

DeFillipo said that he did not discuss the sanitation bids with Ross. DeFillipo explained that during his election Ross was his campaign manager. DeFillipo did discuss his position on outsourcing with Ross in his capacity as his campaign manager, they did not discuss one word whatsoever about any one sanitation company.

**Councilwoman Barbara Kramer:**

Kramer said that she knows Ross very well. She said that it has been so long since he spoke to her about the sanitation services bid that she cannot say that he was lobbying her. Kramer further advised that Ross talked to her about sanitation and the water plants when he was working for CH2 M Hill but she doesn't recall Ross talking to her about WMI; he may have criticized Waste Pro, but this was a very casual conversation. Kramer said that she knows Ross well, but she would tell him if he was doing something stupid.

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<sup>2</sup> Vallejo said that he heard Ross was spreading rumors that the Waste Pro lobbyist, Keith Donner, had worked on the Mayor's campaign and other North Miami Beach council campaigns. The Mayor suspects the Council voted down the bid to Waste Pro, in part, because they were suspicious of the ties Donner had to the Mayor.

**Councilwoman Marlen Martell:**

Martell stated that she knows Ross, she thinks that he lobbied her in the past involving the water plant; that was the only time that he has lobbied her. Martell said that she did have a conversation with Ross regarding sanitation, but he was not lobbying for a specific company. Ross was trying to pick her brain to see if she was for or against privatization of sanitation services.

**Councilman Frantz Pierre:**

Pierre said that Ross did not approach him regarding the sanitation contract at any time.

Pierre said that he was against the privatization of the City's sanitation services. In view of that, he is the last person any of the lobbyists for the sanitation companies would want to lobby. He thought that the City made a mistake in outsourcing its sanitation services.

**Councilwoman Phyllis Smith:**

Smith stated that she did not have any conversations with anyone requesting her support of their bid(s) on the sanitation and recycling RFPs. Smith said that none of the bidders would have lobbied her because they all knew that she was against privatization.

**Councilwoman Beth Spiegel:**

Spiegel stated that she had no recollection of Ross ever talking to her about the 2012 RFP, which was the first RFP in reference to outsourcing the sanitation services. Spiegel also did not recall Ross making any comment to her regarding sanitation or outsourcing of the City's sanitation department. She advised that no one lobbied her on the second RFP.

WMI representative Jason Neal was also interviewed by the COE investigator.

Neal advised that he spoke to complainant Kienzle some time ago. Kienzle called to ask him about lobbying activity by Ross. He told her that the only person who could lobby for WMI is himself and Al Gonzalez.

She had mentioned Ross, but he told her that Ross did not lobby on the matter.

According to Neal, Kienzle “appears to have issues” with Ross. Neal claims he made it clear to Kienzle that Ross was not authorized to lobby for WMI in North Miami Beach.

Neal explained that in May of 2014 WMI hired Ross as a consultant to do communications work for them, but not to lobby on their behalf. Communications work would include outreach and messaging on WMI’s, contamination and recycling campaigns. Ross was not brought in to lobby nor is he authorized to lobby by WMI. Neal commented that “Kienzle appears to like to write about some people who cross her.”

Respondent, Evan Ross, was also interviewed. Ross advised that he is familiar with the political landscape in North Miami Beach. He was a campaign consultant for Councilman DeFillipo and Councilwoman Kramer. Ross was a lobbyist for a company called CH2M Hill regarding an issue about the City’s water treatment plant, for which he was properly registered. Ross acknowledged that he is familiar with the issues surrounding the City’s privatization of the sanitation services.

Ross said that he met Jason Neal of WMI a few times at various political events. He entered into a contract with WMI specifically to serve as a consultant to WMI not to be a lobbyist.

Ross explained that from the time he signed on with WMI he has had no conversations in support of or against the issue of privatizing sanitation services. Ross said that he told WMI that there is no need to lobby the City as six council members had already decided; two were against outsourcing and four were in support of outsourcing; with one in support of re-bidding. The position of the councilmembers was made public on the dais. His job is to give advice to WMI on what the heartbeat of the community is while Gonzalez and Neal do the advocating and lobbying on WMI’s behalf.

**Analysis and Conclusion:**

The investigation failed to yield any evidence that Ross was authorized by WMI to lobby on their behalf or that he lobbied on their behalf. No City official indicated that they were, in fact, lobbied by Ross on the WMI sanitation services RFP.

