

**Resource Recovery Board**

**Chair:** Commissioner Ilene Lieberman, Broward County Board of County Commissioners • **Vice Chair:** Mayor Lou Sarbone, Coconut Creek  
Commissioner Vince M. Boccia, Coral Springs • City of Oakland Park • Commissioner Beam Furr, Hollywood  
Commissioner Lesa Peerman, Margate • Commissioner Troy R. Samuels, Miramar • Commissioner Joseph A. Scutto, Sunrise  
Mayor John P. "Jack" Seiler, Fort Lauderdale • **Executive Director:** Ron Greenstein • **District Counsel:** Eugene M. Steinfeld

**MEMORANDUM**

February 6, 2012

**To:** Ron Greenstein, Executive Director, Resource Recovery Board

**From:** Eugene M. Steinfeld, District Counsel

**Re:** Clarification of RRB Assigned Role (as to new County Ethics Ordinance)

You have asked me to respond to the inquiry of Horace McHugh, Assistant City Manager for the City of Oakland Park, contained in an e-mail dated January 25, 2012.

Mr. McHugh asked in light of Broward County's Ethics Ordinance (Sec. 1-19 of the Code of Broward County) whether:

- 1) Would the RRB (or assigned individual members of the RRB) be expected to consider matters of vendor selection, input into the selection process, or influence in the selection process?
- 2) Would the RRB be considering the award of (a) contract?
- 3) If the response to Item #1 is in the affirmative, please clarify how this would not be in violation of "the" Ethics Ordinance?

Subsection (6)(a) of Section 1-19 of the Code of Broward County entitled "Code of Ethics for electoral officials" provides:

"It shall be a conflict of interest for any Elected Official to serve as a voting member of a Selection/Evaluation Committee in connection with any perspective procurement by the Elected Official's governmental entity. Elected officials shall not participate or interfere in any manner at Committee meetings or in the selection of Committee members, which members shall be appointed by the County Administrator or appropriate municipal staff, as relevant. Upon the completion of the selection process by the Committee, Elected Officials may inquire into any and all aspects of the selection process and express any concerns they may have to their Purchasing Director or, where applicable, other employee with responsibility to oversee the procurement process."



The Broward Solid Waste Disposal District and its governing body, the Resource Recovery Board, was formed pursuant to an Interlocal Agreement by authority of Sections 163.01 and 125.01(5) of the Florida Statutes; along with Ordinance 87-3 of Broward County. The District and the Resource Recovery Board were to fulfill the responsibility of Broward County, required by Chapter 403 of the Florida Statutes to provide for solid waste facilities within the County. See F.S. 403.706(1) and (19).

The Resource Recovery Board is composed of one County Commissioner and eight elected officials from among the 26 Contract Communities forming the District along with Broward County.

Section 5.1 of the 1986 Interlocal Agreement provides:

“The Resource Recovery Board shall serve as the governing board of the special district for the purpose of establishing tipping fees and service charges: advising the COUNTY concerning construction contracts and service agreements: adoption of the plan of operations: and providing oversight of the operations of the resource recovery system for the CONTRACT COMMUNITIES and unincorporated County...”

The ILA further provides in Section 5.4 that the Resource Recovery Board shall...

“review all aspects of the resource recovery system, including, but not limited to, tipping fees, other fees and service charges: revisions or amendments to the plan of operations: the formation, implementation and revision of policies and programs: location, relocation, establishment and reestablishment of resource recovery system facilities to be utilized by the CONTRACT COMMUNITIES and unincorporated County: repairs, maintenance and expansion of facilities: approval and submission of grant applications: and any other management or operational policies or directives which may be needed from time to time.”

As above recited, subsection (c)(6)(a). of section 1-19 of the Code of Broward County provides that elected officials (defined as a County Commissioner or City Commissioner) may “not serve as a voting member of a selection/evaluation committee in connection with any prospective procurement or participate or interfere in any manner at committee meetings or select selection of committee members.” This relates to **“the elected officials governmental entity.”**

Resource Recovery Board members are not elected officials by virtue of the fact that they are Resource Recovery Board members, but rather they are City or County Commissioners. Thus, prospective purchases by City Commission members who sit on the Resource Recovery Board, for Broward County or for the Broward Solid Waste Disposal District are not proscribed by Subsection (c)(6)(a). of Section 1-19 of the Code of Broward County. Therefore, it is my opinion that it is only where a prospective procurement for waste related services would be purchased by the city itself and not the County or the District, that the above recited subsection would prohibit any procurement related actions by RRB members. Only in the event that a prospective procurement would be by a municipality, directly, would a City Commissioner (as opposed to a County Commissioner) be disqualified from being involved in the procurement process. This would be in keeping with the manner in which waste disposal services were obtained pursuant to the 1986 ILA, during most of its existence.



However, most recently, the RRB has considered a request for proposal for recycling services which would extend past the term of the present ILA. In this procurement, it is very likely that there will be direct procurement of recycling services based upon this most recent RFP of the RRB, by municipalities individually, and not through Broward County or any other entity. Contemplating this, and in light of the new County Ethics Ordinance, the procurement committee for possible purchase of recycling services is composed of Broward County Solid Waste and Recycling Services Division staff, and the chair of the Technical Advisory Committee to the RRB (who is an employee of the City of Tamarac). Once the recommendation of the committee is made the Resource Recovery Board may at a public meeting "...inquire into any and all aspects of the selection process and express any concerns they may have...".

The above is in keeping with both the new County ethics ordinance and the duties of the Resource Recovery Board as adopted by the 1986 ILA pursuant to both ordinance and statute.

In abundance of caution, the procedure most recently utilized, above described, is the one I would recommend for all further procurements made by the Resource Recovery Board, whether for Broward County or the Broward Solid Waste Disposal District, during the remaining term of the 1986 ILA or for procurement of waste services subsequent to that term.

In light of the above, the answers to the specific questions asked by the Assistant City Manager of Oakland Park are as follow:

- 1) Yes, the Resource Recovery Board is expected to consider matters of vendor selection, input into the selection process, or influence in the selection process.
- 2) The Resource Recovery Board may be considering the award of a contract.
- 3) Please see the above explanation as to how I believe this would not be in violation of the County's new Ethics Code Ordinance.<sup>1</sup>

Please understand that pursuant to subsection (c)(8) of Section 1-19 of the County Code, only an opinion issued by Oakland Park's City Attorney, after a written request for opinion, would have the effect of providing a determination insulating the participation of a Commissioner of the City of Oakland Park in any matter which could conceivably be a violation of the new Ethics Code for elected officials adopted by Broward County.

---

1. I have not considered in this opinion the question whether the 1986 ILA is the "Charter" (as undefined in the new County Ethics Ordinance) of the Broward County Solid Waste Disposal District as it was adopted in conformity with both County Ordinance and State Statutes. Nor have I considered whether described duties of the Resource Recovery Board in the 1986 ILA, constitute a sufficient conflict in that "Charter" with the County's new Ethics Ordinance, so as to provide a complete defense to any procurement actions of the members of the Resource Recovery Board as may be argued pursuant to Subsection (c)(6)b. of Section 1-19 of the Broward County Code.