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2007 Honeywell vote also subject of ethics complaint

By Jeff Burlew
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Tallahassee Mayor John Marks refrained from voting in 2004 on a contract involving Honeywell International, which had ties to his former law firm, but he didn't abstain when another Honeywell contract came up two and one-half years later.

On Sept. 22, 2004, Marks declared he had a conflict of interest as city commissioners were voting on whether to move forward with contracts totaling nearly \$6 million with Honeywell and Johnson Controls. The project, which passed on a 4-0 vote, involved energy-efficiency upgrades at city facilities.

"Out of an abundance of caution, I'm going to abstain because my law firm may have been doing some work and may continue to do some work with Johnson Controls — I just don't know," Marks said.

In a voting-conflict form filed two days after the meeting, Marks wrote that voting would have led to the special gain of Honeywell and Johnson Controls. Under Florida ethics laws, public officials can't use their official position to secure a special gain for themselves or others.

When Honeywell came before the City Commission on March 28, 2007, however, Marks provided the key vote allowing the city's smart-meter project to move forward.

The mayor's critics say he steered a multi-million-dollar contract to Honeywell while he was a lawyer with Adorno & Yoss, which has represented Honeywell several times since the mid-2000s. But Marks' attorney, Barry Richard, said the firm wasn't representing Honeywell at the time of the 2007 vote and the mayor had no conflict.

Commissioners voted 3-1 to allow contract negotiations with Honeywell, and the city subsequently contracted with Honeywell to install the smart meters and provide software and construction management.

The measure wouldn't have passed had Marks abstained. Former Commissioner Debbie Lightsey voted no, and former Commissioner Allan Katz, also an attorney, abstained because at the time, he was working for Honeywell.

Firm represented Honeywell in three cases

Adorno & Yoss represented Honeywell after a 2005 lawsuit was brought against the company and others alleging asbestos-related injuries from auto parts. Marks' attorney, Richard, said the law firm's work on the case ended with a 4th District Court of Appeal decision Jan. 11, 2006, which was before the smart-meter vote.

The law firm represented Honeywell in another asbestos case, but Richard said it was hired after the lawsuit was filed Oct. 29, 2007, after the smart-meter vote. Richard said the law firm represented Honeywell in another matter that began April 16, 2007, again after the smart-meter vote.

Erwin Jackson, a local businessman and former candidate who filed an ethics complaint against Marks over Honeywell, said Adorno & Yoss was clearly representing Honeywell between 2006 and 2009. The complaint is in the early stages of investigation.

"And it doesn't mean Adorno & Yoss has to have an active case during that (entire) three-year period for Honeywell to be Adorno & Yoss' client," said Jackson, who ran for the City Commission last year. "That's the silliest argument I ever heard of."

City Attorney Jim English, in a memo dated June 20, 2007, said he checked for conflicts involving the law firm and Honeywell before the vote and found none. Richard said Marks asked for a conflict check through Adorno & Yoss and was told he didn't have one.

Marks joined Adorno & Yoss on June 1, 2004, and left March 1, 2009, to start the Marks & Marks LLC law firm with his son, Marks said.

The Adorno & Yoss website used to refer to Marks as "partner in charge of the firm's Tallahassee office." And the mayor's page on the city's website used to describe him as "managing partner of the Tallahassee office of Adorno & Yoss."

But Richard said Marks actually was a contract employee who had a straight salary that never changed.

"It didn't increase by how much business he brought into the firm," Richard said. "He had no interest in profit-sharing in the firm. So even if they got business, he would not be a principal who retained them. He certainly wasn't retained on the Honeywell deal to get them anything."

The Miami-based Adorno & Yoss, reportedly once the biggest minority-owned law firm in the country, now is defunct. The Florida Supreme Court last month suspended Henry Adorno, a named partner, for three years for ethical breaches involving a class-action lawsuit against the city of Miami.

Individuals and entities related to Adorno & Yoss contributed to Marks' re-election campaign in 2006, according to Leon County Supervisor of Elections records. Henry Adorno and George Yoss each gave \$500, the maximum contribution. More than \$2,000 in contributions came from lawyers and groups with the same Adorno & Yoss address, 2525 Ponce de Leon Blvd., Miami.
