
From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, June 16, 2015 4:06 PM
To: Sanchez, Rodzandra (COE)
Subject: H.T. Smith, Attorney Re: The Children's Trust---Voting Conflicts of Interest under Section 112.3143(3) INQ 15-119

INQ 15-119 Smith

From: H. T. Smith [mailto:ht@htsmithpa.com]
Sent: Tuesday, June 16, 2015 3:58 PM
To: Centorino, Joseph (COE)
Cc: Laurie Nuell; Charles M. Auslander; Diaz-Greco, Gilma M. (COE); Sanchez, Gerald (CAO); Arista-Volsky, Maria (CAO)
Subject: Re: INQ H.T. Smith, Attorney Re: The Children's Trust---Voting Conflicts of Interest under Section 112.3143(3)

Mr. Centorino,
Thank you for your prompt, precise and professional opinion.
ht smith
Life is good!

Sent from my iPhone

On Jun 16, 2015, at 3:27 PM, "Centorino, Joseph (COE)" <CENTORI@miamidade.gov> wrote:

Mr. Smith:

You have inquired regarding what action or words are required for a Board member of The Children's Trust with a voting conflict of interest under Section 112.3143(3), to satisfy the requirement under that section that a board member "publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting."

The Miami-Dade Commission on Ethics generally has jurisdiction to provide opinions on the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, or other ethics or ethical campaign ordinances in Miami-Dade County or municipalities within Miami-Dade County. However, The Children's Trust is a unique board, which is not technically a County board, but a board created by the State of Florida. As such it is not automatically subject to County ordinances. The Trust is, however, subject to Chapter 112, Florida Statutes, as well as its own internal rules and such County ordinances by which it has chosen to be bound. Further, the Children's Trust, pursuant to Section III.E of its adopted Conflict of Interest and Code of Ethics Policy, has granted jurisdiction to the Miami-Dade Commission on Ethics and Public Trust "to review, interpret, render advisory opinions and letters of instruction and enforce The Children's Trust Conflict Policy." Section 112.3143, Florida Statutes, is specifically referenced in Section III.A.2. of that Policy as applying to voting conflicts of interests.

I have not found any Florida Commission on Ethics opinions specifically defining the words in question, and my discussion with the Commission's general counsel has indicated that there may be no such opinion. However, the requirement, which is intended to provide reasonable notice to the public of a voting conflict by requiring disclosure of the "nature" of the conflict is fairly susceptible of an interpretation based upon the language of the statute. My advice on this matter may be considered an

informal opinion and general guideline, based upon what I believe is necessary in order to make an appropriate disclosure of a voting conflict under Section 112.3143(3).

In my opinion, the requirement is satisfied if the disclosure includes a brief description of the interest or relationship that creates the possible conflict, as well as the identity of all persons or entities relevant or necessary to explaining why the interest or relationship creates the possible conflict. This includes the relationship between the voting member and any person or private entity involved in a transaction with The Children's Trust, where the relationship is the basis of the conflict, as well such further information that would be reasonably necessary for the public to understand why the voting member might be subject to an influence that would call into question his or her objectivity.

I do not believe that a board member's merely stating his or her name and stating that he or she has a conflict is sufficient to provide the necessary notice to the public required by this section.

I believe that this opinion should suffice for the purpose of this inquiry. In the event that a more formal opinion is needed from the Commission on Ethics either by you or The Children's Trust Board, then such an opinion may be obtained by notifying me and I would request such a formal opinion from the Commission.

Sincerely,

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

From: HT Smith [<mailto:ht@htsmithpa.com>]
Sent: Thursday, June 11, 2015 8:46 PM
To: Centorino, Joseph (COE)
Cc: Laurie Nuell; Charles M. Auslander
Subject: The Children's Trust---Conflicts of Interest

Mr. Centorino,

I respectfully request your assistance regarding what action or words are required for a Board member of The Children's Trust who has a conflict of interest to satisfy the requirement of Section 112.3143(3) to "*publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting...*"

I have recently attended three (3) Board meetings of The Children's Trust. When Board members have a conflict of interest they just state their name and say they have a conflict. They never publicly announce "the *nature* of the officer's interest in the matter".

First, are you aware of any opinion by either the Miami-Dade Commission on Ethics and Public Trust or the State of Florida Commission on Ethics which explains, clarifies or defines what it means to "publicly state ... the **nature** of the officer's interest"...

Second, if there is no opinion, what needs to be done and who needs to do it to have your office issue an official opinion on this important Voting Conflict of Interest Procedure.

Transparency is essential for the public to have trust in public officials - especially those responsibly for awarding in excess of \$100 million of tax dollars each year.

Thank you in advance for your anticipated prompt assistance.

ht smith

Life is good!

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, June 18, 2015 2:27 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ H.T. Smith, Attorney Re: The Children's Trust---Voting Conflicts of Interest under Section 112.3143(3)

Be sure to include this in the INQ 15-119 file.

From: HT Smith [<mailto:ht@htsmithpa.com>]
Sent: Wednesday, June 17, 2015 6:38 PM
To: Charles M. Auslander
Cc: Centorino, Joseph (COE); Laurie Nuell; Diaz-Greco, Gilma M. (COE); Sanchez, Gerald (CAO); Arista-Volsky, Maria (CAO); HT Smith
Subject: Re: INQ H.T. Smith, Attorney Re: The Children's Trust---Voting Conflicts of Interest under Section 112.3143(3)

Mr. Centorino,

I write in response to Mr. Auslander's email trying to justify the procedure used by Board members of The Children's Trust (TCT) when declaring a conflict of interest. May I point out the following admissions by Mr. Auslander:

1. Board members (privately) write, but **do not publicly state** anything of substance "to the assembly".
2. Board members do not provide public information to the assembly about "*the nature*" of the conflict, and this is critical information that the public needs to know at the time the matter is being discussed and voted on - not weeks later through a public records request.
3. Whatever is written by the Board members on this private piece of paper is NOT circulated or otherwise made available "to the assembly" during the Board meeting, and certainly not while the Board is discussing or voting on the item which the Board member is abstaining from voting.

Mr. Auslander has volunteered that he has "**observed and participated in like practices on other Boards**". I respectfully request that you ask Mr. Auslander to provide you the names of those Boards so that you can provide your legal opinion to those Boards as well the proper procedure that should take place when there is a conflict of interest by a Board member.

Transparency, openness and accountability are the touchstones of organizations that serve in a fiduciary capacity with tax dollars of our citizens. The Children's Trust is trusted (pun intended) with \$100 million of taxpayer money each year. I would hope that TCT **would want** to be open, honest and accountable to the public by strictly complying with the letter and spirit of the conflict of interest laws of the State of Florida.

Thank you for being a vigilant watchdog on behalf of the taxpayers of Miami-Dade County.

ht smith
Life is good!

On Wed, Jun 17, 2015 at 6:01 PM, Charles M. Auslander <charles@thechildrenstrust.org> wrote:

Dear Mr. Centorino:

I much appreciate the prompt and thorough reply to Mr. Smith's inquiry, on which I was copied. My intention in writing you is to offer a factual point that may clarify the practice at The Children's Trust regarding voting and conflicts of interest.

As a matter of practice and policy, board members provide a written disclosure of their conflict of interest to The Children's Trust Clerk of the Board. They do so on a form filled out by them during the public meeting at which their conflict is orally disclosed and announced. I have observed and participated in like practice on other public boards.

In summary, The Children's Trust has a written conflict of interest policy, the Clerk of the Board receives forms from board members reflecting the identification of a conflict of interest and hence recusal by the board member on the action item in question is maintained in the public record.

Best regards.

Charles M. Auslander
President & CEO

Tel: [\(305\) 571-5700](tel:(305)571-5700) Ext: 236
Cell: [\(305\) 790-1685](tel:(305)790-1685) Fax: [\(305\) 857-9034](tel:(305)857-9034)
charles.auslander@thechildrenstrust.org



3150 SW 3rd Avenue, 8th Floor
Miami, FL 33129
www.thechildrenstrust.org

The Children's Trust values Integrity, Trust, Teamwork, Quality and Leadership.

[Facebook](#) • [Twitter](#) • [Instagram](#) • [Google+](#) • [LinkedIn](#) • [YouTube](#)

SUNSHINE LAW AND PUBLIC RECORDS NOTICE: The Children's Trust is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.

From: Centorino, Joseph (COE) [<mailto:CENTORI@miamidade.gov>]

Sent: Tuesday, June 16, 2015 3:28 PM

To: 'HT Smith'

Cc: Laurie Nuell; Charles M. Auslander; Diaz-Greco, Gilma M. (COE); Sanchez, Gerald (CAO); Arista-Volsky Maria

Subject: INQ H.T. Smith, Attorney Re: The Children's Trust--Voting Conflicts of Interest under Section 112.3143(3)

Mr. Smith:

You have inquired regarding what action or words are required for a Board member of The Children's Trust with a voting conflict of interest under Section 112.3143(3), to satisfy the requirement under that section that a board member "publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting."

The Miami-Dade Commission on Ethics generally has jurisdiction to provide opinions on the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, or other ethics or ethical campaign ordinances in Miami-Dade County or municipalities within Miami-Dade County. However, The Children's Trust is a unique board, which is not technically a County board, but a board created by the State of Florida. As such it is not automatically subject to County ordinances. The Trust is, however, subject to Chapter 112, Florida Statutes, as well as its own internal rules and such

County ordinances by which it has chosen to be bound. Further, the Children’s Trust, pursuant to Section III.E of its adopted Conflict of Interest and Code of Ethics Policy, has granted jurisdiction to the Miami-Dade Commission on Ethics and Public Trust “to review, interpret, render advisory opinions and letters of instruction and enforce The Children’s Trust Conflict Policy.” Section 112.3143, Florida Statutes, is specifically referenced in Section III.A.2. of that Policy as applying to voting conflicts of interests.

I have not found any Florida Commission on Ethics opinions specifically defining the words in question, and my discussion with the Commission’s general counsel has indicated that there may be no such opinion. However, the requirement, which is intended to provide reasonable notice to the public of a voting conflict by requiring disclosure of the “nature” of the conflict is fairly susceptible of an interpretation based upon the language of the statute. My advice on this matter may be considered an informal opinion and general guideline, based upon what I believe is necessary in order to make an appropriate disclosure of a voting conflict under Section 112.3143(3).

In my opinion, the requirement is satisfied if the disclosure includes a brief description of the interest or relationship that creates the possible conflict, as well as the identity of all persons or entities relevant or necessary to explaining why the interest or relationship creates the possible conflict. This includes the relationship between the voting member and any person or private entity involved in a transaction with The Children’s Trust, where the relationship is the basis of the conflict, as well such further information that would be reasonably necessary for the public to understand why the voting member might be subject to an influence that would call into question his or her objectivity.

I do not believe that a board member’s merely stating his or her name and stating that he or she has a conflict is sufficient to provide the necessary notice to the public required by this section.

I believe that this opinion should suffice for the purpose of this inquiry. In the event that a more formal opinion is needed from the Commission on Ethics either by you or The Children’s Trust Board, then such an opinion may be obtained by notifying me and I would request such a formal opinion from the Commission.

Sincerely,

Joseph M. Centorino

Executive Director and General Counsel

Miami-Dade Commission on Ethics and Public Trust

From: HT Smith [<mailto:ht@htsmithpa.com>]

Sent: Thursday, June 11, 2015 8:46 PM

To: Centorino, Joseph (COE)

Cc: Laurie Nuell; Charles M. Auslander

Subject: The Children's Trust---Conflicts of Interest

Mr. Centorino,

I respectfully request your assistance regarding what action or words are required for a Board member of The Children's Trust who has a conflict of interest to satisfy the requirement of Section 112.3143(3) to "publicly state to the assembly the **nature** of the officer's interest in the matter from which he or she is abstaining from voting..."

I have recently attended three (3) Board meetings of The Children's Trust. When Board members have a conflict of interest they just state their name and say they have a conflict. They never publicly announce "the **nature** of the officer's interest in the matter".

First, are you aware of any opinion by either the Miami-Dade Commission on Ethics and Public Trust or the State of Florida Commission on Ethics which explains, clarifies or defines what it means to "publicly state ... the **nature** of the officer's interest"...

Second, if there is no opinion, what needs to be done and who needs to do it to have your office issue an official opinion on this important Voting Conflict of Interest Procedure.

Transparency is essential for the public to have trust in public officials - especially those responsibly for awarding in excess of \$100 million of tax dollars each year.

Thank you in advance for your anticipated prompt assistance.

ht smith

Life is good!