

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, January 03, 2017 12:00 PM
To: Sanchez, Rodzandra (COE)
Subject: Jeffrey P. Freimark, Councilman, Village of Bal Harbour (Voting Conflict) INQ 16-291
Attachments: freimarkrequest.docx

INQ 16-291 Freimark

From: Centorino, Joseph (COE)
Sent: Tuesday, December 27, 2016 10:59 AM
To: 'RMeyers@wsh-law.com' <RMeyers@wsh-law.com>
Cc: 'David M. Wolpin' <DWolpin@wsh-law.com>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 16-291 Jeffrey P. Freimark, Councilman, Village of Bal Harbour (Voting Conflict)

Robert:

You have inquired on behalf of Jeffrey Freimark, Councilman for the Village of Bal Harbour, regarding whether Mr. Freimark would have a voting conflict in voting on or otherwise participating on upcoming matters having to do with Bal Harbour Shops, based on the fact that his employer has received contributions from members of the Whitman Family, owners of Bal Harbour Shops, as well as the fact that members of the same family have generously contributed to his recent campaign for Councilman in Bal Harbour.

Mr. Freimark is employed as President and Chief Executive Officer of Miami Jewish Health Systems, commonly known as Douglas Gardens. His employer is a non-profit 501(c)(3) organization. The organization, which operates nursing homes, has a revenue base of approximately \$115 million, and averages between \$7 and \$10 million in annual fundraising. Over the past 11 years, the organization has received support from members of the Whitman family that have contributed funds to it, never exceeding .3% of fundraising dollars or .03% in revenues. This support included purchase of a table at a gala fundraising event in the amount of \$7,500. You have indicated that Mr. Freimark's compensation from Miami Jewish Health Systems is on a salaried basis, and does not, in any way, depend on the fundraising done on behalf of the organization.

Additionally, Councilman Freimark received, during his campaign, fourteen \$1,000 checks from individuals connected to the Whitman family, not all of whom may have an ownership interest in the Shops, as well as one \$1,000 contribution from the Shops itself. These contributions were duly reported on Treasurer's Reports submitted in the course of his campaign.

You have also indicated that Councilman Freimark himself has no ownership or other personal interest in Bal Harbour Shops.

It is known that Bal Harbour shops has had and will continue to have a significant interest in matters coming before the Council, related to expansion plans it has proposed and other transactions and activity related to those plans, some of which have been matters of controversy within the Village. It is expected that some of the upcoming votes to be taken on matters involving the Shops will take place in the context of quasi-judicial zoning hearings, as they have in the past.

Section 2-11.1(d) of the County Ethics Code prohibits elected officials from voting in certain situations where a voting conflict exists. They include having one of a number of enumerated relationships with entities affected by a vote, as well as an assessment of whether an individual "would or might, directly or indirectly, profit or be enhanced by action in

question.” Based upon the information provided, it does not appear that Councilman Freimark has a relationship with Bal Harbour Shops that would automatically disqualify him from voting on matters affecting it. The only issue is whether he would personally profit or be enhanced by the action in question.

The fact that his employer, a non-profit organization, has received contributions from members of the family that owns the Shops would not create a prohibited conflict. It appears that there is no connection between those contributions and his compensation, where he is paid a straight salary and the contributions in question amount to a very small percentage of the revenues received by the organization. See also INQ 13-16.

The receipt of legal campaign contributions from an entity, by themselves, have not been held to create any prohibited voting conflict in voting on issues affecting the contributors. If, however, there were an understanding between Councilman Freimark and the owners of the Bal Harbour Shops, that the contributions were conditioned, in any way, on his agreement to support issues related to Bal Harbour Shops, then such an understanding would not only create a prohibited conflict, it could constitute a violation of state bribery laws as well as county ethics ordinances.

Obviously, there is an unmistakable appearance that the relationship between Councilman Freimark and the owners of the Bal Harbour Shops, based upon their generous support of his campaign as well as of the non-profit that employs him, could influence his judgment in voting on matters relating to Bal Harbour Shops. While this appearance alone does not create a prohibited voting conflict, there is a provision in state law, Section 286.012, Florida Statutes, which provides as follows: “If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.” Thus, the ultimate decision on whether Councilman Freimark should vote or abstain from voting on an issue affecting Bal Harbour Shops, in the context of a quasi-judicial decision, lies in his own conscience.

Sincerely,

Joe Centorino

Joseph M. Centorino

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Miami-Dade Commission on Ethics and Public Trust
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From: Robert Meyers [<mailto:RMeyers@wsh-law.com>]
Sent: Wednesday, December 21, 2016 12:53 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>

Cc: David M. Wolpin <DWolpin@wsh-law.com>
Subject: Freimark Request for Opinion -- Bal Harbour

Hi Joe:

Thank you for speaking with us this morning. Per our discussion, I am forwarding the Request for Opinion that we received from Councilman Freimark. Based on these facts and on our conversation with you today, you were of the opinion that he would have no voting conflict of interest should he participate in, and vote on, Bal Harbor Shops matters likely to come before the Village Council in 2017. During our discussion, I also mentioned INQ 13-16, which is somewhat analogous to our facts and supports the position that he has no voting conflict of interest. You indicated that you will provide us a written opinion and will include a section/paragraph on his right to abstain on any quasi-judicial matters involving Bal Harbor Shops if he believes he is biased or cannot be objective.

Lastly, we also discussed whether campaign contributions to Councilman Friemark from principals/owners of the Shops created a legal vote conflict and you concluded that such political contributions would not bar him from hearing/voting on Bal Harbor Shops items. We would appreciate it if you will incorporate this analysis into your opinion as well. As far as the campaign contribution data is concerned, I pulled the Treasurer's Reports for Freimark's campaign and he raised approximately \$56,000. Of the \$56,000, there were 14 contributions of \$1,000 each from individuals with the last name Whitman or Lazenby (these contributions were all reported on April 22, 2016) For the record, Matthew Lazenby is a member of the Whitman family and is the CEO of the Shops. I do not know how many of these 14 contributors have an actual stake in the Shops, but according to the occupations listed on the Treasurer's Reports, only 4 appear to have a direct connection to the Shops. Finally, there was one contribution from the Shops itself for \$1,000 on October 1, 2016.

If you need additional information before drafting your opinion, please let David Wolpin or me know.

Thanks,

Robert

Robert Meyers



|,
P: F: wsh-law.com | vCard



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Jeffrey Freimark
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Bal Harbour, FL 33154
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December 12, 2016

Susan L. Trevarthen
Weis Serota Helfman Cole & Bierman

Dear Ms. Trevarthen,

I was elected for the first time to the Bal Harbour Village Council on November 8, 2016 and sworn in on November 21, 2016. My full-time employment is as President and Chief Executive Officer of Miami Jewish Health Systems (commonly known as Douglas Gardens).

In anticipation of a revised application potentially being presented by the Bal Harbour Shops to the Council for expansion, and in conjunction with certain people involved, I am requesting an opinion from your firm as to whether I would have a voting conflict under the state and local ethics laws that guide elected officials of the Village of Bal Harbour. It is my understanding that members of the Whitman family are the principal owners of the Bal Harbour Shops.

In support of my request for an opinion, I am providing the following information:

1. I have been employed by Miami Jewish Health Systems as President and Chief Executive Officer and a Director since July 2008. My duties are overall Administrative, Operational and Financial responsibilities for this 76-year-old non-profit (501(c)(3)) organization. My reporting relationship is to the Board of Directors.
2. Miami Jewish Health Systems employs an 8-person Development Department that is responsible for fundraising for the organization. This department averages between \$7 and \$10 million in annual fundraising. In addition, we have a \$50 million capital campaign in process (quiet phase).
3. The revenue base for the organization is approximately \$115 million.
4. My role in fundraising efforts includes: signing seasonal letters mailed to supporters; signing specific proposal letters to targeted high value parties and networking with people of influence.
5. Our efforts primarily include parlour meetings, golf tournaments, galas and small group meetings.
6. My compensation (base and bonus) is not at all related to dollars raised through fundraising efforts.
7. Miami Jewish Health Systems has, over the past 11 years, received support from 2 members of the Whitman family that has never exceeded .3% of fundraising dollars raised or .03% of revenues. Of this, 1 member participated in only 1 contribution through a family development group, which was the purchase of a table at a gala in the amount of \$7,500.

Please advise of any additional information you may require.

Sincerely,

Jeffrey P Freimark

