
INQ 16-29

From: Perez, Martha D. (COE)

Sent: Monday, February 01, 2016 3:30 PM

To: 'Gachysolares@aol.com'

Cc: 'mshaber@miamigov.com'; Centorino, Joseph (COE); Diaz-Greco, Gilma M. (COE)

Subject: Grace Solares, Resident, City of Miami, Voting Conflict 16-29

Dear Ms. Solares,

You inquire whether a member of a City of Miami board would have a prohibited conflict of interest serving as an appointed or elected board member of a city community organization or homeowners' association.

By way of example, you posed a hypothetical situation where a city "PZAB" member also serves on the board of a homeowners' association (HOA), and you would like to know what limitations exist regarding his/her "PZAB" functions. Typically, neighborhood or homeowners' associations are considered non-profit entities that do not allow for ownership interests in the entities. They are generally created to address quality of life issues affecting their respective communities. Often, unpaid representatives of these entities appear before commissions or boards to express approval or disapproval of official actions or to request a grant or other funding.

Under **Sec. 2-11.1(v)** of the County Ethics Code, a board member is prohibited from voting on matters presented to an advisory or quasi-judicial board on which the board member sits **IF** the board member would be directly affected by the action of the board he/she serves and he/she has any of the following relationships with the third party (ie., the HOA): (i) *officer*, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor. Consequently, a member of a city board may not participate or vote on matters concerning the HOA where he/she is an officer. See RQO 06-52.

Additionally, in those instances where the city board is a quasi-judicial board, the board member may also abstain under **Sec. 286.012, Florida Statutes**, which provides in part, that, "If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such a matter if the abstention is to assure a fair proceeding free from potential bias or prejudice." See *also* INQ 15-248.

Below is a list of additional County and municipal provisions worth highlighting:

Sec. 2-11.1(m)(2), County Ethics Code, prohibits the city board member, either directly or through an associate, from appearing before any city board or agency in which he/she serves and make a presentation or seek a benefit (ie., grant or other source of funding) on behalf of the third party (HOA). This means that the city board member must not "lobby" or try to influence or persuade his/her board for the benefit of the HOA.

Sec. 2-612 (a), City of Miami Code, prohibits a board member from entering into a contract, transacting business or *appearing in representation* of any third party (HOA) before any board, commission or agency that the board member serves.

Sec. 2-11.1(h), County Ethics Code, prohibits the city board member from disclosing confidential information acquired by reason of his/her city position.

Sec. 2-11.1(g), County Ethics Code, prohibits the city board member from using his/her city board position to secure special privileges or exemptions for himself/herself or others, in this instance, on behalf of the third party (HOA).

Additionally, the Florida Sunshine Act at **Sec. 286.11, Florida Statutes**, prohibits board members from discussing board business except at a duly noticed public meeting where the public is invited and minutes are taken. This means, no board business can be discussed before the meeting is called to order or after the meeting adjourns.

Finally, when a board member recuses himself/herself from a vote based on a conflict of interest, as contemplated by Sec. 2-11.1(v) of the County Ethics Code, he/she must:

- 1) Announce publicly at the meeting the nature of the conflict before the item is heard;
- 2) Absent himself/herself from that portion of the meeting during which the item is discussed and/or voted upon; and
- 3) File a written disclosure of the nature of the conflict with the person responsible for recording the minutes of the meeting, within 15 days after the vote. See **Sec. 112.3143, Fla. Stat.**; See also, State Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Public Officers", available at the Florida Commission on Ethics website, www.ethics.state.fl.us

I hope this provides you with *general* considerations for board members who are also members of non-city boards or organizations. In the event that the board member should have a question in connection with a specific matter coming before his/her board for a vote, it would be appropriate to seek an opinion from this office.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

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From: Haber, Matthew S. [<mailto:MSHaber@miamigov.com>]

Sent: Friday, January 29, 2016 5:20 PM

To: Centorino, Joseph (COE) <CENTORI@miamidade.gov>

Cc: Perez, Martha D. (COE) <perezmd@miamidade.gov>

Subject: FW: PRR AND OPINION

Hi Mr. Centorino,

I hope you are well.

Please see below for an ethics question from a City of Miami resident, Grace Solares. For additional factual information, she can be reached at Gachysolares@aol.com.

In sum, she is concerned about the possibility of a voting conflict were a member of a City board to be appointed to the board of a community organization.

If, for instance, a planning and zoning board member were to join the board of a community group or HOA, how would that individual need to recuse him or herself?

Thank you.



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Begin forwarded message:

From: <Gachysolares@aol.com>
Date: January 29, 2016 at 2:17:54 PM EST
To: <VMendez@miamigov.com>
Cc: <RSuarez-Rivas@miamigov.com>
Subject: Re: PRR AND OPINION

Yes, Vic, it is indeed a very sticky situation and I will caution against it, if indeed such a situation comes to pass. I really would hate to see any of the organizations being in the middle of something that could be interpreted as the organization being a conduit or facilitator of any violation, whether Jennings, Sunshine, or facilitating an opportunity for that person obtaining any pecuniary gain. This is a very bad and dangerous situation that should be avoided.

Please let me know when you have Centorino's opinion.

Take care

Grace

In a message dated 1/29/2016 1:35:46 P.M. Eastern Standard Time, VMendez@miamigov.com writes:

Hi Grace.

Interesting question. The issue really is whether he will be fair and impartial and does he have a pecuniary gain. I am sure neither are the case but it can be seen as appearance of impropriety because he is on the same board with you and you can influence his vote based on all the info he reviewed at the HOA board with you. He also may have Jennings implications based on the conversations she has with all of you on the HOA and any developers or citizens that see you and seek your help as an HOA.

I think it is sticky enough that it would cause issues enough for him to recuse himself. And then he would need to sign the non voting form from the state. Simply walking away to the bathroom is not the correct method.

I would get an ethics opinion letter from centorino. That is the safest approach. I hope this helps a little.

I copied RSR so he can chime in too.

Victoria Méndez, City Attorney

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Begin forwarded message:

From: <Gachysolares@aol.com>
Date: January 29, 2016 at 1:13:41 PM EST
To: <vmendez@miamigov.com>
Subject: PRR AND OPINION

Vicky - hope you are doing well.

Can you please forward a copy of the Circuit Court's appellate Panel's decision in the St. Jude Church Appeal? I have the Third District's I only need the Circuit court's that the Third District upheld.

Also I have a hypothetical question for you which I would appreciate your answering.

Assume one of the organizations that I represent may be faced with the prospect of a City Board Member getting elected to the Board. I mean, any Board of the City but for purposes of focusing let us say PZAB.

Would be it a problem for that person to participate in discussions, presentations, reviewing documents, voting on issues, etc., that may be going before him when he is at PZAB meetings?

Would that person have to recuse himself from participating, discussing, reviewing documents, listening to presentations, being part of Board discussions on the issues if the matter would either be going before the PZAB or could be going before the PZAB?

By recusing himself, would that mean leaving the room or area when all of these issues would be discussed in order not to see, hear or have any incling of where the organization's board is going?

Your answers are greatly appreciated since, if the scenario would occur, I would not like to have any of the organizations being a conduit to any type of violation.



Take care.
Grace