

Sanchez, Rodzandra (COE)

From: Arrojo, Jose (COE)
Sent: Monday, December 03, 2018 10:57 AM
To: lcobiella@gastesi.com
Cc: Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE); Turay, Radia (COE); Ross, Rachelle (COE); Sanchez, Rodzandra (COE)
Subject: INQ 18-257 Cobiella, Voting Conflict - Selection Process for New Manager
Attachments: INQ 18-257 Cobiella, Voting Conflict - Selection Process for New Manager.docx

Dear Mr. Cobiella:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust regarding a potential voting conflict in the City of Miami Lakes. Attached is our INQ regarding the upcoming *process* vote.

Thank you again, and best regards,

Jose

Jose J. Arrojo

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MEMORANDUM

TO: Lorenzo Cobiella, Esq.
Gastesi & Associates. P.A.
for Councilman Luis Collazo

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 18-257, Voting Conflict Question Regarding Process to Select New
City of Miami Lakes City Manager

DATE: December 3, 2018

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a possible voting conflict with respect to an upcoming vote on the hiring of a new City Manager for the City of Miami Lakes.

Facts: Luis Collazo serves as an elected Councilman for the City of Miami Lakes. The Council will be voting on the selection of a new City Manager before the end of the year. The City Manager is responsible for the day to day operation of the City and the supervision of its employees.

Councilman Collazo's spouse, Clarisell De Cardenas, is employed by the City of Miami Lakes as its Community Engagement and Outreach Director. Ms. De Cardenas is new in this position and was promoted on or about February 2018, after holding two other positions over the last several years in the City of Miami Lakes. In the City's table of organization, Ms. De Cardenas is a direct report to the City Manager.

The Council is due to vote on the selection of a new City Manager. ¹

Also, the Council is considering not only a vote on a new City Manager selection but also a proposal by Councilman Josh Dieguez to abandon the current list of candidates that remains from a community leader committee lead process and to restart the selection process anew using a professional recruiter driven model.

Issue: Does Councilman Collazo have a voting conflict that precludes him from voting or otherwise participating in the vote on the *process* for the selection of the next City Manager because his spouse is a municipal employee and a direct report to the City Manager.

Discussion: To restate, Ms. De Cardenas is a recently promoted municipal director in the City of Miami Lakes. She is a direct report to the City Manager and thus the incoming Manager will be her immediate supervisor without any intervening level of supervision. The selected Manager will make employment decisions regarding Ms. De Cardenas including setting her work schedule, making work assignments, as well as supervising and evaluating her work product. The Manager will be charged with Ms. De Cardenas' performance evaluations and will have the authority to directly impact her salary. He will have the authority to promote and discipline. Moreover, Ms. De Cardenas is employed in an "at-will" capacity and so the selected Manager will be able to terminate her employment for cause or no cause, if the termination is not contrary to law.

Section 2-11.1(a) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, clarifies that the Ethics Code sets minimum standards of ethical conduct and that its provisions are made applicable to officials and employees of county government and to all municipal governments within Miami-Dade County, including Miami Lakes.

Section 2-11.1 (d) of the Ethics Code, prohibits elected officials from voting on or participating in any matter presented, if the official *would or might, directly or indirectly, profit or be enhanced* by the action of the City Council. This conflict voting prohibition is stricter than the state law standard codified in Section 112.3143 (1)(d), Florida Statutes, which provides that "No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss..." (INQ 14-86).

¹ In INQ 18-251, we opined that Councilman Collazo did have a prohibited conflict regarding a vote on the selection of a new City Manager.

We note that Florida Statute 286.012 also addresses recusal from voting where there is an appearance of a conflict of interest. Florida Statute 286.012 (2018) provides that public officials may not abstain from voting unless:

.. there is or *appears* to be a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards, if any, adopted pursuant to s. 112.326. “(Emphasis added)

Given the enhanced conflict voting prohibition enumerated in the Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in circumstances such as this one where an official might, directly or indirectly, profit or be enhanced by a vote. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. (*See* RQO 15-04)

In applying the Ethics Code conflict voting prohibition, we have opined that an elected official should not vote or participate (including attendance at a workshop) in the consideration of alternative code enforcement system because the official’s spouse was the municipal code compliance director. Therefore, the reorganization of the code compliance department, including the use of special masters, could impact the spouse’s job duties, work performance measurements, and salary. (INQ 13-92)

Here, Councilman Collazo’s spouse, Ms. De Cardenas, holds a position at the director level in the City that she was only recently promoted to, and she would be directly supervised by the new incoming City Manager. Thus, the selection of the City manager could reasonably be expected to affect most if not all of Ms. De Cardenas’ job duties and employment terms, which in turn would or might affect Councilman Collazo’s interests either directly or indirectly.

Opinion: Given that most if not all of the Ms. De Cardenas’ employment terms could be impacted by the newly selected City Manager, and that the Councilman would or might profit or be enhanced directly or indirectly by the vote, and given that an appearance of a conflict of interest could reasonably be inferred in this situation, we have recommend that Councilperson Collazo recuse himself from voting on the selection of the City Manager and that he not participate in any way on the matter.

Applying this same analysis to a vote on the *process* to select a new City Manager, we cannot say that Councilman Collazo would or might profit or be enhanced directly or indirectly by the vote. While the adoption of a new selection model may in effect result in the rejection of the current slate of candidates, and this might give rise to an appearance of conflict of interest, this remains a vote on what is described as an objective selection. This is particularly so if the new process utilizes a professional recruitment model.

For this reason, we do not believe Section 2-11.1 (d) of the Ethics Code, prohibits Councilman Collazo from voting on or participating in the matter relating to City Manager selection process.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

If you have any further questions regarding this matter, please do not contact me.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.