



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Thomas F. Pepe, City Attorney, City of South Miami

FROM: Gilma Diaz-Greco, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-12

DATE: 2-11-20

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in appearances by a City Board member before the board on which he serves.

Facts:

Manuel Menendez is a board member serving on the City of South Miami's Historic Preservation Board, a board with quasi-judicial authority. Mr. Menendez and his spouse own a home in the City of South Miami which is designated as a historic home. They are planning to do some work on their house that requires approval by the HPB and the issuance of a certificate of appropriateness (COA). Mr. Menendez advises that, given that the board's vote on the application would impact his property and personal interests, that he will recuse himself from discussing or voting on the application and issuance of the COA for his property. However, he inquires whether he may appear before the HPB to present the application to the HPB Board.

Issue:

Whether Mr. Menendez, after recusing himself from voting, may appear before the HPB Board on which he serves and present his application, or whether he is required to leave the room during the time that the application is being considered while someone else presents the application.

Analysis and Opinion

In this instance Mr. Menendez has advised that he will recuse himself from voting due to the fact that a vote on an application related to improvements to his home and the issuance of a COA for the work by the HPB board would affect his personal and financial interests. However, he would still like to participate in this matter by appearing before the HPB board to present his application. It is our understanding that no other City of South Miami ordinance, nor the HPB enabling ordinance prohibit Mr. Menendez from appearing before the HPB.

Both the County Ethics Code and the City of South Miami Ethics Code prohibit board members from appearing before the board on which they serve to represent *third parties*, such as persons or entities. Miami-Dade Code Section 2-11.1(m)(2), and City of South Miami Code Section 8-A(l). These Codes however, do not, prohibit representation of the board member's individual interest before the board on which he or she serves. Furthermore, you advise that no other City of South Miami ordinance, nor the HPB enabling ordinance, prohibit Mr. Menendez from appearing before the board on which he serves. Consequently, he is permitted to appear before the HPB board to present his application.

With respect to the procedure to use following a recusal in circumstances such as this, neither the County Ethics Code Section (v), nor the City of South Miami Code Section address the procedure to be followed in the case where a **board member** has recused him or herself from voting on a matter that affects him or her personally but will still participate in the matter by appearing before his or her board. Given that the County Code of Ethics serves as a minimum standard of conduct, the COE has previously commented in informal opinions that it would be a best practice for a Board member to avoid any participation and to absent himself or herself from the room during the meeting where the matter that creates a voting conflict will be discussed or voted upon. See, e.g., INQ 17-110, INQ 16-152, and INQ 16-97.

Nevertheless, we note that State law provides the procedure to be followed by an appointed board member in the case of a voting conflict in State Form 8(b). While the Miami-Dade Commission on Ethics does not interpret or enforce State law, we encourage you to contact the Florida Commission on Ethics for any final determination on the correct voting conflict procedures, we refer you here to the procedure to be followed pursuant to 112.3143, Fla. Stat.(2019) and the Florida Commission on Ethic's [*Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees \(2020\)*](#):

I. Conflict Known

-Recuse from voting and must file the memorandum of voting conflict Form 8B with the meeting's recording officer prior to participating (appearing before the board);

- The memorandum of conflict State Form 8B be provided to the other members of the board;
- The memorandum of conflict must be read publicly at the next meeting.

II. Conflict Not Known or Undisclosed Prior to the Meeting

- If the conflict is unknown or not disclosed prior to the meeting, the appointed official must and orally disclose the conflict at the meeting when the conflict becomes known and must recuse himself or herself from voting;
- Also, a written memorandum of voting conflict Form 8(b) must be filed with the meeting's recording officer within 15 days of the disclosure being made;
- The memorandum of conflict must be provided to the other members of the board, with the disclosure being read publicly at the next scheduled meeting.

Consequently, after recusing himself from voting, Mr. Menendez is not prohibited from appearing before the HPB board on which he serves, but he must file the memorandum of voting conflict Form 8B in the manner prescribed by State law which was addressed above.

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. We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with this matter change or if Mr. Mendoza will have to appeal this matter to the City Commission, please contact us for additional guidance.

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.