



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Susan Kawalerski
Manager, Bike305 Program, County Parks, Recreation and Open Spaces (PROS)

FROM: Martha D. Perez, General Counsel
Commission on Ethics & Public Trust

SUBJECT: INQ 2021-13 [Conflict of interest, prospective service on County board, Sections 2-11.1(j), (v), (m)(2)]

DATE: January 26, 2021

CC: COE Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflict of interest in your proposed service on the Citizen's Independent Transportation Trust (CITT).

Background:

You are a County employee working in the Parks, Recreation and Open Spaces Department (PROS). Your primary duty is Manager of the Bike305 Program.¹ You serve on the Coral Gables Transportation Advisory Board (TAB)² and you are also the Vice-President of the Everglades Bicycle Club (EBC).³

¹ Bike305 is a collaboration between several Miami-Dade County municipalities, the Miami-Dade County Department of Transportation and Public Works and South Florida cycling groups, all of which encourage healthy lifestyles and support transportation alternatives like cycling to get to work or school. Throughout the year, cycling events that explore trails and greenways are held as well as programs that teach safe cycling skills to children and adults. miamidade.gov

² The Coral Gables' TAB recommends improvements to develop transportation connectivity of all modes to provide a variety of transportation alternatives with the ultimate goal of protecting and maintaining the multi-modal transportation network and the safe and effective use the city's public rights of way. coralgables.com/departments

³ The EBC is a not-for-profit cycling club run by volunteers. evergladesbc.com

CITT is a semi-autonomous County board responsible for the management of the half-penny County transportation surtax and the implementation and oversight of the County projects in the People's Transportation Plan (PTP). The board reviews contracts requesting PTP funding and monitors all surtax-funded projects. CITT works closely with members of the Board of County Commissioners (BCC), the County administration, staff at Miami-Dade Department of Transportation and Public Works (DTPW) and municipal officials to insure proper expenditure of PTP funds.

You have advised that the EBC does not receive any funding or donations from CITT.

Discussion:

This office may consider and opine on whether a prospective CITT board member has a conflict of interest, pursuant to the County Ethics Code, affecting his or her service on the board. *See* Section 2-1421(h), Miami-Dade County Code

Section 2-1421 of the Miami-Dade County Code (CITT enabling ordinance) prohibits membership to a person with any interest, direct or indirect, in a contract with the County or in an entity which contracts with the County. Pursuant to Section 2-1421 (a), members shall be residents of Miami-Dade County who possess outstanding reputations for civic involvement, integrity, responsibility, and business and/or professional ability and experience or interest in the fields of transportation mobility improvements or operations, or land use planning. No person shall be eligible to serve who has any interest, direct or indirect, in a contract with the County or in any corporation, partnership or other entity that has a contract with the County.

It is noted that, as a volunteer officer of EBC, you do not derive any financial interest from the non-profit entity. *See* INQ 17-271

Likewise, the Conflict of Interest and Code of Ethics ordinance (County Ethics Code) does not prohibit you from serving as a member of the CITT during your employment as the County's Manager of the Bike305 Program and your volunteer service with the EBC. *See* INQ 14-168; INQ 19-33; INQ 20-137.⁴

The duties of your County position and your volunteer contribution to the EBD do not appear to overlap with your prospective board service to the point that your independence of judgment would be affected so as to create a conflict of interest. *See* Section 2-11.1(j), County Ethics Code Notwithstanding, you should avoid dealing in your County position with any issue that could foreseeably come before you as a board member and vice-versa. *See generally* INQ 17-52

While you are not prohibited from serving in the CITT, it is important to note the following provisions of the County Ethics Code applicable to County employees and/or board members:

Under Section 2-11.1(v), a board member prohibited from participating and/or voting on a matter if the board member has an enumerated relationship (officer, director, partner, of counsel,

⁴ Notably, while a person serving on the CITT is prohibited from serving on any other County board, you are permitted to serve simultaneously on CITT and Coral Gables TAB. Section 2-11.139, Miami-Dade County Code.

consultant, employee, fiduciary, etc.) with any entity affected by the vote *and* the board member might, directly or indirectly, profit or be enhanced by the board action. In order for a voting conflict to exist, both prongs of this section must be met. *See* RQO 07-49, INQ 20-73.⁵

Under Section 2-11.1(m)(2), a board member may not appear before his or her board on behalf of a third party. Consequently, you would be prohibited from appearing before CITT (i.e., lobby CITT) or another County board or department on behalf of EBC or any other entity for projects to be funded with surtax proceeds. *See* INQ 13-224; *See also* Section 2-1421(h), MDC Code (Trust members shall not lobby, directly or indirectly, the Mayor, any member of the County Commission or any member of County staff regarding a project funded in whole or in part by surtax proceeds, or regarding any person or business bidding for or under contract for a project funded in whole or in part with surtax proceeds).

Under Section 2-11.1(g), a board member (or County employee) may not use his or her official position to gain special privileges or exemptions for a third party.⁶ In other words, a board member may not use his or her County [board] position to gain any special competitive advantage in any funding application or other County decision-making situation that might benefit his or her non-profit entity as such activity could be considered exploitation of official position. *See* INQ 15-82

Finally, pursuant to Section 2-11.1(i), a County board member must file financial disclosure forms every year.

Opinion:

Under the facts provided herein, you are not prohibited from serving on the CITT. However, we recommend that you seek approval from your County supervisor to ensure that your board service will not interfere with your County employment (hours, resources, etc.) *See* INQ 17-52

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.

⁵ Since you are an unpaid officer of EBC and any matter that comes before that community-based organization will not affect you as an individual, it seems unlikely that you would have a voting conflict on such a matter. *See* INQ 12-53 and INQ 17-69

⁶ An act which may be considered exploitation includes the disclosure of confidential information gained through the member's service in a County board or the use of that information for his or her personal gain or benefit. Section 2-11.1(h), County Ethics Code

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.