



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Juana Leon, Administrative Services Manager
The Children's Trust

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-33, Voting Conflict, §2-11.1(d)

DATE: February 24, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflicts of interest by The Children's Trust board members on Resolution 2021-G - Early Childhood Development.

Background:

The Children's Trust Board (TCT) is an independent special district established by Miami-Dade County in Art. CIII, Sections 2-1521 through 2-1531 of the Miami-Dade County Code (TCT ordinance).

You have advised that Resolution 2021-G, recommending, "Authorization to negotiate and execute a contract with the University of Miami-Nova Southeastern University (UM-NSU) Center for Autism and Related Disabilities (CARD) for autism spectrum disorders (ASD) diagnostic evaluation services, in a total amount not to exceed \$264,000.00, for a term of 12 months, commencing October 1, 2021, and ending September 30, 2022," will be considered at an upcoming meeting of TCT board.

Miami-Dade County Public Schools (M-DCPS) and the Florida Department of Health Early Steps providers often identify young children who need specialized evaluation due to complex behaviors and symptoms that suggest the presence of autism spectrum disorders (ASD). This Resolution seeks approval of funding which supports comprehensive psychoeducational diagnostic evaluation services for children ages 2 through 5 years (before kindergarten entry), provided by UM-NSU CARD at a reduced unit cost. Evaluation services include the components listed below, and the current Diagnostic and Statistical Manual of Mental Disorders and best practices in ASD assessment.

You inquire on behalf of several TCT board members regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2021-G. You make this inquiry in light of M-DCPS' role as a referral source to the entities receiving the funding proposed by the Resolution:

- 1) Magaly Abrahante is an employee of M-DCPS. M-DCPS does not receive any funding from this contract.
- 2) Tiombe Bisa Kendrick-Dunn is employed by M-DCPS as a school psychologist and is the Chairperson for Professional Growth & Development at M-DCPS. M-DCPS does not receive any funding from this contract.
- 3) Dr. Dorothy Bendross-Mindingall is a M-DCPS Board member. M-DCPS does not receive any funding from this contract.
- 4) Richard Dunn works for M-DCPS. M-DCPS does not receive any funding from this contract.

Discussion:

This office may consider and opine on whether a TCT board member has a conflict of interest, pursuant to the County Ethics Code, affecting his or her vote or participation in a funding allocation from TCT. *See* RQO 19-06

TCT's Conflict of Interest and Code of Ethics Policy states, inter alia, that a board member shall not vote on any matter presented to the CT Board if the member will receive a direct financial benefit from the board action. TCT's Bylaws also provides that, "Board members will act in such a manner to avoid the appearance of impropriety. No member shall serve as a staff member of any agency when The Children's Trust provides more than fifty (50) percent of the agency's budget, and The Children's Trust's funds may pay no portion of a Board member's salary."

There are no facts indicating that any of the board members will be receiving a direct financial benefit from board action, therefore, a conflict analysis under TCT rules is not applicable.

The Ethics Code at Section 2-11.1(d), establishes a voting conflict if:

- 1) The board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote;
- 2) The board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it would affect the public generally; and,

- 3) The board member might, directly or indirectly, profit or be enhanced by the board action.¹
See RQO 15-04.

An automatic voting conflict arises when the board member has a prohibited relationship with the entity *affected* by the Resolution: In this instance, TCT board members are employees, officers, or board members of M-DCPS, which is acting as a referral source only for UM-NSU CARD, the recipient and beneficiary of the agreement. M-DCPS receives no funding as a result of the agreement.

Although the board members have enumerated relationships with M-DCPS, there is no unique impact which would create a voting conflict for those members who are employees or officers of government entities. *See* Memorandum to RQO 19-04. Likewise, there is no funding being provided to the entities of which several members hold official positions.

It is noted that, none of the board members work for UM-NSU CARD.

None of the board members referenced herein would be affected by this vote in a matter distinct from the public generally: M-DCPS and Miami-Dade County will benefit in the agreement by way of their contribution to the overall purpose of allowing “[c]hildren [to] regularly access medical, dental and behavioral health care services; [ensure] children are ready for kindergarten; and [ensure] children behave appropriately in schools, homes and communities.”

Finally, there are no facts indicating that any of the board members referenced herein might profit or be enhanced by the board action providing authorization to negotiate and execute a contract with UM-NSU CARD: TCT is not providing funding to any of the members’ governmental entities. Any possible indirect benefit to any of the board members, as employees or board members of M-DCPS, is too remote to create a voting conflict.

There are no facts indicating that the board members may profit or be enhanced by the board action authorizing the funding for UM-NSU CARD. *See* INQ 20-46; INQ 20-47; and INQ 20-48.

Opinion:

Under the details provided concerning this Resolution of TCT for authorization to negotiate and execute a contract with UM-NSU CARD, it does not appear that any of the board members referenced herein will profit or be enhanced by this vote nor will a special benefit come to any of them in their capacities as employees, officers or members of M-DCPS which acted only as a referral source for the funding.

¹ This section of the County Ethics Code applies to the Mayor and members of the Board of County Commissioners (BCC); however, by implication, members of The Children’s Trust board may be included for purpose of analysis because, as an independent special district, the role and authority of TCT members mimics the role of the BCC, as ultimate decision-makers of contracts allocating funds such as the ones described herein.

Also, based on the purpose and goal of UM-NSU CARD and the participation objectives of the Center and governmental entities involved, the members' voting and participation would not raise the perception of an appearance of impropriety in this Resolution.

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.

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.