

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Monday, September 23, 2013 5:32 PM
To: 'robert@robertyaffe.com'
Cc: Frigo, Victoria (COE); Diaz-Greco, Gilma M. (COE)
Subject: INQ - Mayor Robert Yaffe - Possible Voting Conflict

Mayor Yaffe:

You have inquired regarding whether you have a prohibited conflict of interest in voting on the appointment of a replacement for the Bay Harbor Town Council, where one of the applicants for the position is a partner in the law firm from which you sublease space for your private law practice.

I will summarize the facts as you have related them. You serve as the Mayor of the Town of Bay Harbor Islands, where there is a vacancy in the Town Council due to the resignation of one of its members. The vacancy will be filled by vote of the members of the Council. The Town Council is the governing body of the Town. You sit on the Council as the Mayor. The positions on the Town Council pay an annual salary of \$1. One of the four applicants for appointment to the vacancy is Joshua Fuller. Mr. Fuller is a partner in the law firm of Fuller & Associates, P.A., which is the lessor of commercial space that is subleased to other attorneys. Your firm, Robert A. Yaffe, P.A., is one of the law firms which subleases space from Fuller & Associates. You have no written lease but make a monthly rental payment to Fuller & Associates, which is current as of this date. Based upon your knowledge of the market rate for the space your firm is subleasing and the terms of the rentals of other law firms in the same building, you believe that you are paying a fair market rate for the space.

Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics governs questions of voting conflicts for elected officials. There are several relationships enumerated in that section that would automatically prohibit you from voting on matter if you had one of the enumerated relationships with an individual or entity that would be affected by the vote. These include "officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary." You do not appear to have any of the aforesaid relationships with the lessor of the space rented by your law firm. There are other enumerated relationships with entities that would be affected by the vote—"stockholder, bondholder, debtor or creditor"—which would bar you from voting on a matter if the transaction or matter would affect you or your firm in a manner distinct from the manner in which it would affect the public generally. Again, you do not have any of the aforesaid relationships, although you could potentially develop a debtor relationship should you become in arrears on your rental payments. If, as you have advised, you are current in rental payments, then there would be no prohibition raised under the latter provision. Additionally, the same section would also bar you from voting on a matter in which you "would or might, directly or indirectly, profit or be enhanced by the action of the Board..." While it is speculative at best at this point, if you believe that there is any chance that your voting on this matter would provide a benefit that would profit or enhance you or your law firm, such as more favorable rental or lease terms, then you should not vote on this matter. If you do choose to vote on this matter, I would advise you to continue to be mindful of this provision.

While this agency does not have authority to interpret State law, the applicable State provision under the State of Florida Code of Ethics for Public Officers and Employees (F.S. 112.3143) provides that voting conflict arises when an official is called upon to vote on any measure that would inure to the officer's special private gain or loss, or which he/she knows would inure to the special private gain or loss of any principal by whom the officer is retained or the parent organization or subsidiary of a corporate principal. You have indicated that you are not a "relative" of Mr. Fuller. The definition of "Business Associate" is limited to being associated as a partner, joint venturer, corporate shareholder or co-owner of property involved in a business enterprise.

Based upon the foregoing, it does not appear that you have a prohibited conflict of interest in voting on the replacement to the Town Council under the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance. Bear in mind, however, that the Miami-Dade Code represents only a minimum standard of ethical conduct. If, for any reason, you should feel that your relationship with the individual involved would interfere with your ability to apply your independent judgment to the issue in the interest of the public you have sworn to serve, then you should consider again whether it is appropriate for you to vote on this matter.

If you have any further questions in this matter, please do not hesitate to call me.

Sincerely,

Joseph M. Centorino

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