
From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, April 23, 2014 3:52 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: Ethics Opinion (Board Conflict) INQ 14-107

INQ 14-107

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, April 23, 2014 3:51 PM
To: 'Pepe, Thomas F.'
Cc: Centorino, Joseph (COE)
Subject: Ethics Opinion (Board Conflict) INQ 14-107

Dear Mr. Pepe:

You have inquired whether a board member may be appointed to serve on the South Miami Community Redevelopment Agency (SMCRA) where she has also entered into an agreement with the SMCRA for a grant award. The grant award has conditions that extend over a number of years which could affect the award.

Generally, the Ethics Code would not prohibit the appointment of a board member, unless the appointment would cause such a severe conflict as to cause an instant and irrevocable conflict between the appointee's private interests and public duties. In this case it is our opinion that an irrevocable conflict of public and private interests would occur where an individual who has received a grant from a public board becomes a candidate for appointment to the same board. In order to avoid a prohibited conflict of interest the board member would have to choose between serving on the board and continuing to receive the grant from a city agency.

The South Miami City Code at Sec. 8A-1(c) prohibits a Planning Board member (as defined in the City Code at Sec. 8A-1(b) (3)) from entering into any contract or transacting any business with a City agency. It is our understanding that you consider the South Miami CRA to be a City agency. As we have explained in previous inquiries, the Ethics Commission has consistently held that accepting a grant from a City agency is a clear example of contracting with the City and transacting business with the City. *See also* The County Ethics code at Sec. 2-11.1 (c)(3) (a board member is prohibited from contracting with any agency or department subject to the regulation, oversight, management, policy making or quasi-judicial authority of the board on which that person is a member). Only a waiver from the City Commission with four affirmative votes will overcome this prohibition. *See* City Code at Sec. 8A-1(c)(3). Consequently, a board member could not both sit on a board and receive a grant from that same board.

Further, you advise that the award in this case has conditions that extend over a number of years and could therefore create recurring conflicts. This could trigger Fla. Stat. 112.313(7) which prohibits a public officer or employee from having a contractual relationship or employment with an agency or business entity that is subject to the regulation of, is doing business with the officer's agency, or that will create a continuing or frequently recurring conflict of interest; or that would impede the "full and faithful discharge" of public duties. For a binding interpretation of this statute we refer you to the Florida Commission on Ethics. Their website is at: <http://www.ethics.state.fl.us/>.

Please do not hesitate to contact us if we may be of further assistance.

Best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Thursday, March 06, 2014 11:55 AM
To: Diaz-Greco, Gilma M. (COE)
Subject: Ethical issue for a person doing business with city and being appointed to City Board or Agency

May a person, who has just entered into a grant agreement with a City agency, such as the South Miami Community Redevelopment Agency ("SMCRA"), which agreement is for a number of years and which is enforced by the SMCRA, be appointed to the SMCRA? See the additional facts and opinions set forth below.

Very truly yours,

Thomas F. Pepe

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From: Pepe, Thomas F.
Sent: Thursday, March 06, 2014 11:49 AM
To: Mayor & Comm
Cc: David, Stephen
Subject: RE: Requested Information - Lashawnda Williams SMCRA Grant Award

Mr. David brought to my attention the fact that Lashawnda Williams entered into an agreement with the CRA for a grant award. Since the grant award has conditions over a number of years that could affect the award, it would appear that Lashawnda Williams is currently "doing business or transacting business" with the Agency. The City's ethics code, section 8A-1, (c) prohibits a member of the agency from doing business with the Agency. See the following:

(c) Prohibition on transacting business with the city. No person included in the terms defined in paragraphs (b)(1) through (6) and in paragraph (b)(9) shall enter into any contract or transact any business in which that person or a member of the immediate family has a financial interest, direct or indirect with the city or any person or agency acting for the city, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violation of this subsection shall constitute malfeasance in office and shall effect forfeiture of office or position.

The Miami Dade County commission on ethics has previously ruled that this provision of the city code of ordinances would prevent a planning board member from entering into a lease with the CRA. See the following opinion:

Mr. Pepe,

Please disregard the previous ethics opinion given to you on behalf of a South Miami Planning Board member who wishes to enter into a contact with the South Miami Community Redevelopment Agency (CRA) to become a tenant in its business incubator building and who wishes to apply for a grant from the CRA.

The reason this opinion has been revised is that the South Miami City Code at Sec. 8A-1(c) differs substantially from the County Code at Sec. 2-11.1 (c)(3) on the subject of transacting business with the City.

The South Miami City Code at Sec. 8A-1(c) prohibits a Planning Board member (as defined in the City Code at Sec. 8A-1(b)(3)) from entering into any contract or transacting any business with a City agency. It is my understanding that you consider the South Miami CRA to be a City agency.

The Ethics Commission has consistently held that the activities the Planning Board member wishes to engage in—entering into a lease agreement with a City agency and **accepting a grant from a City agency—**are clear examples of contracting with the City and transacting business with the City.

Consequently, under the City Code, the Planning Board **member may not contract with the City or any of its agencies** to enter into a lease or **accept a grant** from the City or a City agency. Only a waiver from the City Commission with four affirmative votes will overcome this prohibition. See City Code at Sec. 8A-1(c)(3).

Thank you for calling my attention to the difference between City Code and the County Code on this subject. I apologize for any inconvenience my oversight may have caused you.

Sincerely,

VICTORIA FRIGO, SENIOR STAFF ATTORNEY

Direct Phone: 305 350-0601

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19 West Flagler St., Suite 820
Miami, FL 33130

While Ms. Frigo's opinion concerns the action of an existing planning board member and prohibits that member from doing business with the city, it would appear that a person doing business with the City could not become a member of a City board or agency if there were a possibility that such business would come before the board or agency for its consideration. See, also, the opinion of Mr. Centorino, set forth below.

From: Centorino, Joseph (COE) [CENTORI@miamidade.gov]
Sent: Friday, February 22, 2013 2:07 PM
To: Pepe, Thomas F.
Subject: INQ - Thomas Pepe, City Attorney, City of South Miami

Mr. Pepe:

You have requested an opinion concerning whether Mr. Luigi Vitalini, who currently sits as a member of the City of South Miami Planning Board, has a prohibited conflict of interest in connection with his involvement as an architect working with a firm that is responding to a Letter of Request for Qualifications to be the developer of a mixed use development project in the City of South Miami. Mr. Vitalini is an architect by profession and would be contracting with the firm to provide architectural services in the event that the project were to be approved. At some point in the process the project would go before the Planning Board for approval.

This issue is governed by Section 2-11.1(o) of the Miami-Dade County Conflict of Interest and Code of Ethics, which provides that a **public official**, including a person serving on an advisory board, such as the Planning Board, **may not acquire a financial interest** in a project **when that person believes or has reason to believe that the financial interest will be directly affected by** his or her official actions or by official **actions of the agency of which he or she is an official**. Since his contractual relationship with the firm responding to the RFQ would amount to a "financial interest," and because that financial interest would be directly affected by the action of the Planning Board to approve or disapprove the project or some phase or aspect of the project, I have concluded that Mr. Vitalini may not acquire such an interest while a member of the Planning Board. At such time as Mr. Vitalini enters into a contract with such an entity he should not be a member of the Planning Board.

I would be happy to discuss this further with you.

Joseph M. Centorino

Executive Director and General Counsel
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I will submit these fact to the ethics commission and request an opinion as to whether or not Lashawnda Williams may be a member of the CRA under these circumstances.

Very truly yours,

Thomas F. Pepe

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From: David, Stephen

Sent: Wednesday, March 05, 2014 1:06 PM

To: Pepe, Thomas F.

Subject: Requested Information - Lashawnda Williams SMCRA Grant Award

Mr. Pepe,

I understand that a City Commission Item was approved yesterday evening appointing Lashawnda Williams as new SMCRA Board Member. Please be advised that an SMCRA homeowner's assistance grant award and related declaration of restrictions was approved by the SMCRA Board for Ms. Williams on **(See Attached)**.

Stephen