
From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, July 28, 2014 4:08 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ 14-118, Barry Cohen, Commissioner, Town of Surfside (Amended opinion) (Voting Conflict)

INQ 14-118- Ammended Opinion

-----Original Message-----

From: Centorino, Joseph (COE)
Sent: Monday, July 28, 2014 11:35 AM
To: 'Barry Cohen'
Cc: Linda Miller (lmiller@townofsurfsidefl.gov); Diaz-Greco, Gilma M. (COE)
Subject: INQ 14-118, Barry Cohen, Commissioner, Town of Surfside (Amended opinion) (Voting Conflict)

Commissioner Cohen:

You have asked that I re-examine my previous opinion of July 14, 2014, in light of some different facts concerning your relationship to The Shul which you have detailed in your email of July 23, 2014. My previous opinion was based upon my understanding of the information related to me in conversations we had concerning this matter. The opinion was based, as any opinion must, upon certain given facts and circumstances. Your email has changed or corrected certain of those facts, and my present opinion is rendered in reliance upon these amended facts as provided by you.

The facts you relate change an important underlying consideration in this opinion. It appears now that you do have a financial relationship with The Shul. The Shul does charge annual membership fees, which have not been paid by you for several years. During that time you have been invoiced by The Shul for the outstanding dues, which to date remain outstanding. Inasmuch as you have an outstanding debt to The Shul, which remains due and owing, and that the Shul has extended to you the courtesy of permitting you to maintain your membership at The Shul while you have been in arrears, you have a debtor relationship with The Shul pursuant to Section 2-11.1(d). While you may not have any particular interest or involvement in the project that is the subject of the issue coming before the board, it is clear that The Shul does have a significant interest in this project. There is at least a possibility that your vote on this matter could affect the Shul's position in connection with its collection of the outstanding debt owed by you to The Shul. There is also a possibility that your judgment on the issue could be affected by your consciousness of your debt to the Shul and the Shul's indulgence in permitting you to maintain your membership.

Moreover, Section 2-11.1(d) of the Code contains an additional provision that creates a higher standard than that raised by a debtor/creditor relationship. An elected official may not vote on a matter if he or she "might, directly or indirectly, profit or be enhanced" by the action of the board," regardless of any particular relationship with the person or entity affected by the vote. This language creates a very strict standard on voting conflicts. Your position as a member of the Shul, combined with your having been granted extensions of several years to pay the outstanding debt accumulated from several years of non-payment of dues, creates a circumstance where it can be said that you might indeed profit or be enhanced regarding that debt in the event that you vote on this issue.

Your voting on this matter while a member of the Shul would have created a possible appearance of impropriety issue, as indicated in my previous opinion to you. Even if you were current in your dues to the Shul, there would be at least a possibility that you could profit or be enhanced in the event that the vote should lead to an increase in the financial resources available to the Shul, thereby affecting the amount of the dues charged its members. The latter circumstance by itself could lead to a voting conflict. The additional information regarding the unpaid debt for past dues, however, places this matter in a posture where it can be stated categorically that a conflict exists. Accordingly, I have concluded that you have a conflict that precludes you from voting on the issue of the expansion of The Shul.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust

-----Original Message-----

From: Barry Cohen [mailto:bcohen@townofsurfsidefl.gov]
Sent: Wednesday, July 23, 2014 4:59 PM
To: Centorino, Joseph (COE)
Subject:

Mr. Centorino,

Re: Ethics Opinion (Voting Conflict) INQ 14-118

Dear Mr. Centerino,

This letter shall serve as a request for clarification and supplementation of your e-mail opinion issued on May 12, 2014 (the "Opinion"). I apologize for the belated response to the Opinion, but after reading that the Opinion found no conflict of interest, I did not focus on the specific details of the Opinion until recently. A challenge to the Town's comprehensive plan amendment impacted upon The Shul's application and caused the matter to be deferred several times. Thus, I did not closely examine the specific findings of the Opinion until recently when The Shul's hearing was finally scheduled for August 28, 2014.

With respect to the issue of membership dues, the Opinion states that "you have never been asked to pay such a fee nor have you ever paid a membership fee." This is not accurate. In my e-mail of April 30 below, I advised you that "I have been a member of the Shul for the past 20 years", and in my e-mail of May 8 below, I stated that "I have not paid fees in several years." At no time did I state in our e-mails or discussion that I had never paid dues. It is my recollection that I advised you during our call that due to a medical hardship, I had not paid any membership dues to The Shul since 2010, which is consistent with my e-mails below.

Please be advised that I paid regular membership dues from 1994 until 2010. Although I have not paid dues since 2010, I have been periodically invoiced for dues and I plan to eventually bring my account current. As I explained in my two e-mails of May 8 below, The Shul's policy on membership dues is quite liberal. The dues are currently \$1,250 a year for a family membership.

I do not believe that this clarification of the facts alters the inquiry on whether I have a prohibited conflict of interest under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the "Code") in participating and voting on The Shul's proposed expansion. As you know, Section 2-11.1(d) of the Code's voting restrictions are limited to the following: (i) officer, director, partner, of counsel, consultant, employee,

fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in Subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally.

Since these restrictions do not include a “member” of an organization, the issue of whether a member pays dues or not is irrelevant, and the member does not need to recuse himself from the vote.

Moreover, I have no financial or pecuniary interest in the outcome of The Shul’s application. To the contrary, I am advised that if the application is granted, The Shul is expected to raise its annual membership dues and may impose a building fund fee on its membership in order to support the construction and operations of the expanded facilities. I have no school aged children who would attend the proposed expanded school facility, and I would not be impacted by the proposed expanded social hall or other facilities in any manner that would be different than any other member of the very large Shul community.

Your prompt attention to this matter will be greatly appreciated because The Shul’s application is scheduled to be heard on August 28, 2014. I look forward to your response.

Sincerely,

Barry R. Cohen
Commissioner, Town of Surfside

NOTE: Florida Public Records Law provides that most written communications to or from Municipal employees regarding town business are public records, available to the public and media upon request. Therefore, this e-mail message may be subject to public disclosure.

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, May 12, 2014 3:41 PM
To: Sanchez, Rodzandra (COE)
Subject: Ethics Opinion (Voting Conflict) INQ 14- 118

INQ 14-118

-----Original Message-----

From: Centorino, Joseph (COE)
Sent: Monday, May 12, 2014 2:22 PM
To: 'Barry Cohen'
Cc: Linda Miller; Diaz-Greco, Gilma M. (COE)
Subject: INQ - Barry Cohen, Commissioner, Town of Surfside (Voting Conflict)

Commissioner Cohen:

You have inquired whether you have a prohibited conflict of interest under Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance in participating and voting on a matter pertaining to an upcoming vote concerning expansion of The Shul, a local synagogue of which you are a member. You have informed that membership fees are not required and that you have never been asked to pay such a fee nor have you ever paid a membership fee. Your membership entitles you to attend religious prayer services along with several hundred other members of The Shul. The expansion in question would permit an enlarged day school and social hall. You have no children involved in the day school. The social hall would not affect you any differently than it would affect any other member. You have also informed that you are not a member of the staff or board at The Shul and that you have no financial stake of any kind in this project and no financial or business relationship whatsoever with The Shul.

Under these circumstances, it is my opinion that you do not have a prohibited conflict of interest in participating and voting on this matter because you do not have any of the relationships with The Shul that would prohibit you from voting and you do not stand to specially profit or be enhanced by the issue in question. Please be aware, however, that the Code of Ethics provides the minimum standard of ethics applicable to local officials. If you as a member of The Shul feel that you could not be fair and objective in this matter, or if you feel your participation in this matter would create an appearance of impropriety inconsistent with the maintenance of the public trust, then you should consider whether it is appropriate for you to recuse yourself from participating and voting in this matter.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
305-579-2594

-----Original Message-----

From: Barry Cohen [mailto:bcohen@townofsurfsidefl.gov]

Sent: Thursday, May 08, 2014 3:00 PM
To: Centorino, Joseph (COE)
Cc: Linda Miller
Subject: RE:

This shall serve as a reply to your email. I am unaware of what the membership fee requirements are with the Shul. I have not paid fees in several years. Fees are not required to be a member and attend the Shul. I am like several hundred other people who come to the Shul and do not pay fees and have never been asked to pay fees. As I previously explained, anyone can come to the Shul at any time without any requirement for paying a fee.

From: Centorino, Joseph (COE) [CENTORI@miamidade.gov]
Sent: Thursday, May 08, 2014 12:16 PM
To: Barry Cohen
Subject: RE:

Mr. Cohen

Thanks for this information. While I understand that there may be special arrangements for those unable to pay the entry or membership fees, please inform me what the standard fees are as well as the fees that you have paid. Thanks.

Joe Centorino

-----Original Message-----

From: Barry Cohen [mailto:bcohen@townofsurfsidefl.gov]
Sent: Thursday, May 08, 2014 10:05 AM
To: Centorino, Joseph (COE)
Subject: RE:

Mr. Centorino,

Anyone can become a member of the Shul regardless of their ability to pay or level of religious affiliation. There are no commitments required except to pay membership dues if you are able. If you are unable, you can pay whatever you are able to. Membership of the Shul entitles you to attend religious prayer services on a weekly and daily basis. The purpose of the expansion is to increase the size of the day school and social hall. The benefits are to the members. I personally will not receive any benefit from the expansion as I have no children of day school age. I will not receive any benefits from the expansion of the social hall any different from any other member of the Shul. The only benefit that any member of the Shul will derive from the expansion is a larger social hall.

If I can be of any further assistance, please do not hesitate to contact me. I am looking forward to your response.

From: Centorino, Joseph (COE) [CENTORI@miamidade.gov]
Sent: Friday, May 02, 2014 5:52 PM
To: Barry Cohen
Subject: RE:

Commissioner Cohen:

I need a bit more information to answer your question. Please let me know what it entails in terms of becoming a member of The Shul, i.e., fees, commitments ,etc. Also, what does membership entitle you to? Additionally, what is the purpose of the expansion and the likely benefit to the members? I hope to be able to give you something more definitive on Monday if I can get the answers to these questions.

Joe Centorino

-----Original Message-----

From: Barry Cohen [mailto:bcohen@townofsurfsidefl.gov]

Sent: Wednesday, April 30, 2014 3:05 PM

To: Centorino, Joseph (COE)

Subject:

Mr. Centorini,

Thank you for your time and attention during our recent telephone conversation.

This shall serve as the supporting information you requested regarding the opinion request from Town of Surfside, Town Attorney Linda Miller.

On May 13, 2014 an organization known as The Shul will come before the Commission for approval applicant of construction plans which have been recommended by Town staff and approved unanimously by the Planning and Zoning Board.

As you are aware, I am a commissioner and will be voting on this matter. A Question may be raised whether I have a conflict of interest voting on this matter.

I have been a member of the Shul for the past 20 years. The Shul is a Jewish Synogoge where I attend religious services. I am one of several hundred members of the Shul. I do not serve on any boards or committees. I have no financial interest in or from any of the financial affairs of the Shul. I will receive no individual benefit from the decision to approve or deny the construction plans.

I look forward to your reply in this query

Barry Cohen
Commissioner
Town of Surfside

NOTE: Florida Public Records Law provides that most written communications to or from Municipal employees regarding town business are public records, available to the public and media upon request. Therefore, this e-mail message may be subject to public disclosure.