
From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, July 02, 2014 3:41 PM
To: Sanchez, Rodzandra (COE)
Subject: Richard Weiss, Attorney for Village of Bal Harbour- Ethics Opinion (Voting Conflict) INQ 14-162
Attachments: votingconflictFormB.pdf; votingconflictmemo.doc

INQ 14-162

From: Centorino, Joseph (COE)
Sent: Wednesday, July 02, 2014 1:24 PM
To: 'Richard Jay Weiss'
Cc: Diaz-Greco, Gilma M. (COE)
Subject: INQ - Richard Weiss, Attorney for Village of Bal Harbour (Voting Conflict)

Mr. Weiss:

You have inquired on behalf of one of the members of the Bal Harbour Council regarding whether he may vote on an issue before the Council involving a major expansion of the Bal Harbour Shops, where he is the manager of the fancy dress department at Neiman Marcus, one of the two largest tenants in the Bal Harbour Shops. This expansion would serve to significantly enhance the economic prospects of its major tenants.

As an employee of one of the business entities which “would be or might be directly affected” by the action, the Council Member has a relationship specified in Section 2-11.1(d) of the Code that would prohibit him from voting or otherwise participating in this matter. Further, because of his position in Neiman Marcus, he “might, directly or indirectly, profit or be enhanced” by the action, inasmuch as a major financial benefit to Neiman Marcus would likely also benefit its managerial staff. Therefore, it is my opinion that he may not vote or otherwise participate in this matter, and that he should 1)publicly declare the nature of his conflict prior to the vote; 2)absent himself from the Council chamber during any discussion or vote on this issue; 3)File the requisite Florida Commission of Ethics Form B (attached) with the Village Clerk within 15 days of the vote.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 579-2594
Fax: (305) 579-0273
ethics.miamidade.gov



Miami-Dade County
Commission on Ethics and Public
Trust

Memo

To: All Elected Public Officials of Miami-Dade County or any Municipality within Miami-Dade County

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

Date: January 16, 2013

Re: Voting Conflict Procedures

This memorandum is intended to provide guidance to all elected public officials serving as members of any elected board or commission in Miami-Dade County government or in the government of any municipality within Miami-Dade County. It addresses the issue of what such an official, who has a conflict of interest preventing him or her from voting on a particular item, must do to comply with the provisions of Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, as well as Section 112.3143(3), Florida Statutes. The memorandum specifically addresses the issue of whether absenting oneself from a meeting during discussion of such an item, in compliance with Section 2-11.1(d) of the County Code, is sufficient to satisfy the provisions of Section 112.3143(3), which requires both public announcement of the conflict and written disclosure of the conflict within 15 days after the vote.

This issue was raised recently in discussions and correspondence between staff at the Miami-Dade Commission on Ethics and Public Trust, which interprets and enforces the County Code provision, and staff at the State of Florida Commission on Ethics, which interprets and enforces Section 112.3143(3), which is included in the Code of Ethics for Public Officers and Employees under Chapter 112, Florida Statutes. While the recommendations contained in this memorandum are not based upon any binding decision or opinion issued by either body, they represent our best assessment of the legal requirements concerning voting conflicts, and should be adhered to in the absence of any definitive ruling from a legally authoritative source having jurisdiction over these issues.

Under Section 2-11.1(d) of the County Code, which applies to all county and municipal elected officials in Miami-Dade County, an elected official with a voting conflict “shall absent himself or herself from [the] meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.” This requires that such an official leave the room during both the discussion and the vote, and not speak, communicate or otherwise participate in the discussion and the vote on the issue that is the subject of the conflict. It does not require any public announcement or written disclosure of the conflict.

Section 112.3143(3), Florida Statutes, applies to all county, municipal, or other local public officers within the State of Florida who vote on matters in an official capacity. It requires that any such officer with a conflict of interest “shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.” It differs from the County Code provision in that the official need not absent himself from the meeting. Instead, it requires the official to provide public oral notice of the conflict prior to the vote, to abstain from the vote, and to make written disclosure of the conflict within 15 days after the vote. A copy of Florida Commission on Ethics Form 8B is attached to this memorandum.

Under Section 112.326, Florida Statutes, the state legislature recognized the right of local governments to enact legislation that creates more stringent standards of conduct and disclosure requirements than those in state law. This validates the County Ordinance, which is more stringent than state law in providing that the official in question must leave the room during the discussion that takes place on the item creating the conflict. I have been advised that in the past some officials in Miami-Dade County have relied in good faith on informal legal opinions provided by County, Municipal or Ethics Commission attorneys suggesting that compliance with the County Ordinance excused them from the notice and disclosure requirements of the state law.

However, this does not appear to be the interpretation that the State of Florida Commission on Ethics would follow in the event that it should consider the issue in the future. Based upon formal and informal opinions I have reviewed from the Commission, I have concluded that local officials who absent themselves from a portion of a meeting to avoid being present during a conflict item, must still state publicly prior to the vote the nature of the conflict as well as make the required written disclosure within 15 days after the vote to be in compliance with Section 112.3143(3).

There is an exception to the foregoing, recognized in an opinion of the State of Florida Commission on Ethics (CEO 88-3), indicating that a board member who is absent from an entire meeting, during which an item arises on which that member would have had a conflict of interest, need not comply with the notice and disclosure requirements of Section 112.3143(3). However, that opinion is limited to situations where the member is absent from the entire meeting during which an item on which that member has a conflict is discussed or voted upon. Presence of the member at a portion of the meeting would still trigger the notice and disclosure requirements, even though the member was not present during either the discussion or the vote on that item.

Therefore, it is my recommendation to all elected officials in the county and in all municipalities within the county, that when they are aware that they have a conflict on an item that is to be discussed and/or voted upon at a meeting and they are present for any portion of that meeting, they should do the following: 1) announce publicly at the meeting the nature of the conflict before the item is heard; 2) absent themselves from that portion of the meeting during which the item is discussed and/or voted upon; and 3) file a written disclosure of the nature of the conflict with the board clerk or whoever may be charged with recording the minutes of the meeting within 15 days after the vote.

Anyone having a question about this issue or any related issue should feel free to contact and speak with me or another attorney at the Miami-Dade Commission on Ethics at 305-579-2594.

cc: Offices of the Miami-Dade County Attorney and all Municipal Attorneys within Miami-Dade County

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 _____:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- ___ inured to the special gain or loss of my business associate, _____;
- ___ inured to the special gain or loss of my relative, _____;
- ___ inured to the special gain or loss of _____, by
whom I am retained; or
- ___ inured to the special gain or loss of _____, which
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

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A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 _____:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- ___ inured to the special gain or loss of my business associate, _____;
- ___ inured to the special gain or loss of my relative, _____;
- ___ inured to the special gain or loss of _____, by whom I am retained; or
- ___ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

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Signature

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