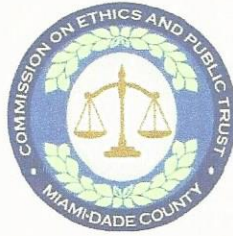


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Via email at: JAbreu03@gmail.com

October 10, 2018

Javier Gonzalez-Abreu
11211 SW 82 Avenue
Miami, FL 33156

Re: RQO 18-04 Limitations on Transacting Business with the County. Miami-Dade Code § 2-11.1 (c)(3). Actions Prohibited When Financial Interests Involved. Miami-Dade Code § 2-11.1 (n).

Dear Mr. Gonzales-Abreu:

IN A PUBLIC MEETING on October 10, 2018, the Miami-Dade Commission on Ethics and Public Trust ("County Ethics Commission") opined that the County Ethics Code does not prohibit a Community Council board member from contracting as a Section 8 Landlord with the Miami-Dade Public Housing and Community Development department ("PHCD") where the property is located outside of the jurisdiction of the Council on which the member serves because Community Councils do not regulate, oversee, manage, set policy for, or exert quasi-judicial authority over PHCD or Section 8 programs. In addition, the Community Council member may not vote on any land use matter that involves or affects the Section 8 program because the County Ethics Code prohibits County board members from taking actions in their public positions that would directly or indirectly affect the private financial interests of the board member.

Background

You served as an elected Community Council board member in Community Council 12 designated as the Kendall Community Council. Community Councils were established in 1996 as County boards authorized to perform the duties and responsibilities of Community Zoning Appeals Boards ("CZAB")¹ as set forth in the Miami-Dade County Code.² Community Councils are composed of both elected and appointed board members.³ They were created to make zoning and land use decisions in

¹ See Miami-Dade County Code, § 20-41 (A).

² See Miami-Dade County Code, § 33-306.

³ See Miami-Dade County Code, § 20-43.

a setting accessible to the community and they also serve as advisory liaisons from their communities to the Board of County Commissioners ("BCC") and County staff, relaying relevant information and recommendations on selected concerns of the council area.⁴

You own a condominium located in the City of Homestead, which is outside of the area of jurisdiction of Community Council 12.⁵ You were seeking to contract with PHCD as a Section 8 landlord and requested an opinion from the COE in compliance with the County Ethics Code's requirements that County board members obtain an ethics opinion prior to contracting with the County.⁶

Research showed that the COE previously determined in RQO 02-04, currently still in effect, that neither Community Council board members nor their immediate family members could contract with the County as Section 8 landlords. Consequently, the COE informed you that you could not contract with the County as a Section 8 landlord. Subsequently, you determined that renting the property was essential for your personal interests, and therefore you resigned from your position on Community Council 12 in order to contract with the County as a Section 8 landlord. However, you advise that you would like to serve again as a Community Council member in Council 12 as soon as possible, and you requested that the COE reconsider RQO 02-04 to permit Community Council members to serve as Section 8 landlords in accordance with the exemption set out in County Ethics Code section 2-11.1(c)(3) discussed below.

PHCD administers federal Section 8 subsidized payments for approximately 15,000 families in Miami-Dade County. Section 8 programs provide a subsidy to landlords who rent to low-income tenants via the Section 8 Housing Choice Voucher ("HCV"). PHCD administers the issuance of the HCV and the contracts with Section 8 landlords. Housing assistance through the receipt of an HCV is tied to the person, not the unit, and allows the participant to lease any unit that meets the program requirements, including units outside PHCD's jurisdiction.⁷ Landlords who choose to accept an HCV from a tenant must contract with the local housing agency as Section 8 landlords. The demand for housing assistance often exceeds the limited resources available to HUD and the local housing agencies such as PHCD. Therefore, long waiting periods are common. In fact, 50,000 families are currently on the waiting list in Miami-Dade County (a waiting list of that size would generally create a 5 to 10 year waiting period).

⁴ See Miami-Dade County Code, §§ 20-40 et seq.

⁵ The condominium address is 1270 SE 28 CT #203, Homestead, Florida, 33035. E-mail from Javier Gonzalez-Abreu, to Gilma Diaz-Greco, Staff Attorney, Miami-Dade County Commission on Ethics and Public Trust (June 25, 2018 10:59 a.m. EST) (on file with author). See map of Community Council 12 available at: <https://www.miamidade.gov/zoning/library/Maps/community-council-12-map.pdf>. The southernmost boundary of Community Council 12 is SW 152nd Avenue, which is north of the boundary of the City of Homestead.

⁶ See Miami-Dade County Code, § 2-11.1 (c)(4) which states in relevant part: "Any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) shall Seek a conflict of interest opinion from the Miami-Dade County Commission on Ethics and Public Trust ("the Ethics Commission") prior to submittal of a bid, response, or application of any type to contract with the County by the person or his or her immediate family." (Emphasis added.) Sections (b)(3) and (b)(4), listed below in footnotes 10 and 11, cover quasi-judicial and advisory boards.

⁷ The HCV is portable. Participants are eligible to move to a different unit in a different housing authority's jurisdiction and have their rental assistance move with them. Portability allows you to use your voucher to rent a unit anywhere in the United States where there is a housing authority that runs a Housing Choice Voucher program. E-mail from PHCD Staff, to Gilma Diaz-Greco, Staff Attorney, Miami-Dade County Commission on Ethics and Public Trust (October 1, 2018 12:04 p.m. EST) (on file with author).

Regarding Community Councils, they make land use decisions for the area that is within the jurisdiction of the particular Community Council. They do not oversee, administer, or make any decisions related to the administration of PHCD or of the Section 8 programs. Although uncommon, it is possible that PHCD might appear representing the County before a Community Council (acting in its capacity as a community zoning appeals board) regarding a private developer's application for the development of an affordable housing project (which might include some units allocated for Section 8 housing). In that case, what would be before the Community Council would only be the decision regarding the land use desired by the private developer; i.e., the size of the building, how many units, etc. While some of those details could indirectly affect whether a part of a development may be used for Section 8 housing, Community Councils do not have the jurisdiction to administer or oversee either PHCD or any of its decisions regarding the Section 8 HCVs or Section 8 landlord contracts.

Legal Analysis

Several sections of the County Ethics Code are relevant to the analysis of these issues:

A) Limitations on contracting with the County

Generally, the County Ethics Code allows County board members and their immediate family members⁸ to transact business with the County under certain circumstances.⁹ However, it prohibits County board members from transacting business with the County departments or agencies which they regulate or oversee:

Section 2-11.1(c)(1) states:

No person included in the terms defined in subsection (b)(1) through (6) and in subsection (b)(9)¹⁰ shall enter into any contract or transact any business, **except as provided in subsections (c)(2) through (c)(6) ...** (Emphasis added.)

Section 2-11.1(c)(3) addresses County quasi-judicial and advisory boards and states:

Limited **exclusion** from prohibition on autonomous personnel, **advisory personnel and quasi-judicial personnel** contracting with county. Notwithstanding any provision to the contrary herein, **subsections (c) and (d) shall not be construed to prohibit any person defined in subsection (b)(2), (b)(3)¹¹ and (b)(4)¹² from entering into any contract**, individually or through a firm, corporation, partnership or business entity in which the board

⁸ The County Ethics Code defines the term "immediate family members" as "the spouse, domestic partner, parents, stepparents, children and stepchildren of the person involved." Miami-Dade County Code, § 2-11.1(b)(9).

⁹ See Miami-Dade County Code, § 2-11.1 (c)(3).

¹⁰ See Miami-Dade County Code, §§ 2-11.1 (b)(3) and (b)(4), defined below in footnotes 11 and 12.

¹¹ Subsection (b)(3) refers to "quasi-judicial personnel" which is defined as "members of the Community Zoning Appeals Board and such other boards and agencies of the County as perform quasi-judicial functions." Miami-Dade County Code, § 2-11.1(b)(3).

¹² Subsection (b)(4) refers to "advisory personnel" which is defined as "members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners." Miami-Dade County Code, § 2-11.1(b)(4).

member or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County. However, any person defined in subsection (b)(2), **(b)(3) and (b)(4)** is prohibited from contracting with any agency or department of Miami-Dade County subject **to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.** (Emphasis added.)

B) Actions prohibited when financial interests involved

The County Ethics Code prohibits any County employee from participating in any official action directly or indirectly affecting a business in which he or she, or any member of his or her immediate family has a financial interest.¹³

With respect to your inquiry, the COE previously determined in formal opinion, RQO 02-04, that neither Community Council board members, nor their immediate family members, were permitted to contract with the County as Section 8 landlords. The analysis in that opinion only applied the general limitations on contracting with the County found in Section (c)(1). However, RQO 02-04 did not apply the **current** language in the County Ethics Code which provides an exemption stated in Section 2-11.1(c)(3). That exemption provides that members of County boards may contract with the County as long as the board on which they serve does not regulate or oversee the departments or agencies with which the member is seeking to contract.¹⁴

Given that Community Councils do not regulate, oversee, manage, set policy for, or exert quasi-judicial control over PHCD or the Section 8 Landlord program, the holding of RQO 02-04 is inconsistent with the plain text of the exemption included in the current County Ethics Code in Section 2-11.1 (c)(3).¹⁵ Therefore, under Section (c)(3) of County Ethics Code currently in effect, members of County quasi-judicial and advisory boards such as Community Councils may contract with the County in cases such as this where the County board in question does not administer or oversee the County department with which the board member is contracting and where the property in question is outside of the jurisdiction of the Community Council on which the board member serves.¹⁶

¹³ Miami-Dade Code, § 2-11.1(n).

¹⁴ Research dating back to the 1970s regarding the amendments to section (c) of the code did not reveal a clear date for when exemption (c)(3) was added to the County Ethics Code. The last year listed for an amendment to Section (c) in Municode is 2000 prior to RQO 02-04 which was determined in 2002. While we cannot pinpoint the exact date when exemption (c)(3) was added to the County Ethics Code, it is clear that the exemption is part of the current County Ethics Code which allows County board members and their immediate family members to transact business with the County under certain circumstances.

¹⁵ Furthermore, review of COE opinions authored by the legal staff shows that the COE has previously advised Community Council members, in other contracting contexts, that contracting with the County was permitted as long as the board member's Community Council did not regulate, oversee, etc. the County Agency or Department with which the board member was seeking to contract. See, e.g., INQ 10-106 (Community Council member not prohibited from serving on Community Council #10 and simultaneously holding contracts with Miami-Dade County as long as Community Council #10 does not regulate, oversee, manage, set policy for, or exert quasi-judicial authority over the departments with which the board member has contracts) and 17- 266 (A Community Council member may contract with Miami- Dade County through his privately-owned company, but he may not enter into any contract if the board on which he serves is involved in the selection, oversight, or administration of the contract).

¹⁶ See Miami-Dade County Code, § 2-11.1(c)(3).

Another issue to address here is whether a prohibited conflict of interest would arise if you were to vote on land use matters that were brought to the Community Council on which you serve, which might affect your financial interests as a Section 8 landlord.¹⁷ If this were to arise, Section 2-11.1(n) of the County Ethics Code would prohibit any Community Council member such as yourself, from voting on any land use matter that involves or affects the Section 8 program because County board members may not take actions in their public positions that would directly affect their private financial interests.¹⁸

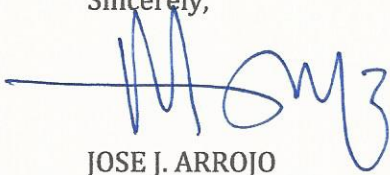
V. CONCLUSION

Based on the facts presented, here, it is the recommendation of COE staff that the Commission determine that a Community Council board member may contract with PHCD as a Section 8 landlord where the property in question is outside of the area of jurisdiction of the Community Council on which the board member serves. The current County Ethics Code permits members of autonomous, advisory and quasi-judicial boards such as Community Councils to enter into contracts with Miami-Dade County provided that the board on which the member serves does not regulate, oversee, manage, set policy for, or exert quasi-judicial authority over the departments or agencies with which the member is seeking to contract. COE Staff further recommends rescinding the opinion by the County Ethics Commission handed down in RQO 02-04 because that opinion did not apply the exemptions set out in Section 2-11.1(c)(3) of the current County Ethic Code. Moreover, the Commission on Ethics finds that a Community Council member may not vote on a matter affecting that board member's interests as a Section 8 landlord.

This opinion is based on the facts presented and construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. If the facts change, please contact the Commission on Ethics. The opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me or Gilma Diaz-Greco, Staff Attorney, if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JOSE J. ARROJO'.

JOSE J. ARROJO

Executive Director

¹⁷ In this case, the property in question at which Mr. Gonzalez-Abreu is a Section 8 landlord is not located within the boundaries of Community Council 12.

¹⁸ It should also be noted that no member of a Community Council shall appear at any public hearings or meetings before the Board of County Commissioners or any other federal, state, or local board or tribunal, to advocate concerning any zoning application that was heard by, or that could reasonably be expected to be heard by, any Community Council. See Miami Dade Code 20-41(c).