

# MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 25, 2019

Honorable Esteban L. Bovo  
Miami-Dade County Commissioner, District #13  
111 NW 1<sup>st</sup> Street  
Miami, FL 33128

**Re: RQO 19-02: Voting Conflicts for County Commissioners, Miami-Dade Code § 2-11.1(d);  
Prohibition on Exploitation of Official Position, Miami-Dade Code §2-11.1(g)**

Dear Commissioner Bovo:

IN A PUBLIC MEETING on April 10, 2019, the Miami-Dade Commission on Ethics and Public Trust ("Ethics Commission") opined that Section 2-11.1(d) of the County Ethics Code, does not impose a blanket prohibition on your participation or voting on all matters where the Lasarte Law Firm is engaged on behalf of Aecom, simply because your adult step-son, Mr. Oscar de la Rosa, who is a law student, works at the firm as a legal assistant. However, you may not vote on a matter if there is a reasonable possibility that you would or might, directly or indirectly, profit or be enhanced by the vote. Therefore, if Mr. de la Rosa, has been assigned to work by the Lasarte Law Firm on the Aecom matter that is pending consideration by the Board of County Commissioners (BCC), then you should not participate or vote on that specific matter, as it would be considered a voting conflict under Section 2-11.1(d) of the Ethics Code, and exploitation of official position under Section 2-11.1(g) of the Ethics Code.

### Background

You are an elected County Commissioner. Your adult step-son is Oscar de la Rosa. Mr. de la Rosa is a law student and is employed by the Lasarte Law Firm where he assists attorneys on legal matters primarily related to real estate and development.

One of the Lasarte Law Firm clients is Aecom. Aecom is a large international company engaged in design, build, financing and operation of significant infrastructure projects. It reports that it does business in more than 150 countries around the world. Aecom is currently engaged as a County vendor or proposer on more than one project.

In his legal assistant capacity, Mr. de la Rosa has been tasked by the Lasarte Law Firm to work on some matters involving Aecom where the company is engaged with the County.

The following question was therefore submitted to the Ethics Commission for consideration:

Does a blanket prohibited voting conflict exist that would prevent you, Commissioner Bovo, from participating or voting on any matters where the Lasarte Law Firm has been retained to represent Aecom, or rather, if a prohibited voting conflict exists, is it limited to those specific matters on which your adult step-son has worked on?<sup>1</sup>

### Legal Analysis

The Conflict of Interest and Code of Ethics Ordinance at Sec. 2-11.1(d) states:

... [N]o [County Commissioner] shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (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 ... in a manner distinct from the manner in which it would affect the public generally.

Any [Commissioner] who has any of the *above relationships or who would or might, directly or indirectly, profit or be enhanced by the action* of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.<sup>2</sup>

In previous opinions, the Ethics Commission explained that Subsection 2-11.1 (d) creates three separate categories for potential voting conflicts:

- 1) An automatic prohibited conflict if the voting member has one of the following relationships with an entity "affected" by the vote before the board: officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary;
- 2) A contingent prohibited conflict if the voting member has one of the following relationships with an entity "affected" by the vote AND the matter would affect the person in a manner distinct from the manner in which it would affect the public generally: stockholder, bondholder, debtor, or creditor;

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<sup>1</sup> On February 21, 2019, COE Executive Director, Jose Arrojo issued INQ 19-21 which addressed the issue presented in this memorandum. The INQ was discussed by Staff Attorney, Radia Turay, at the Ethics Commission's March 2019 meeting, as part of her presentation on the monthly summary of inquiries issued by COE staff during the months of January and February 2019. The Ethics Commission expressed an interest in further review of the matter as a Request for Opinion (RQO).

<sup>2</sup> Miami-Dade County Code at Sec. 2-11.1 (d) (emphasis added).

- 3) A broad prohibited conflict if the voting member "would or might, directly or indirectly, profit or be enhanced" by the action of the board in-question.<sup>3</sup>

Significant in the instant case is the fact that neither you nor your stepson have any of the prohibited enumerated relationships with Aecom, the entity that would be the subject of the item under consideration by the BCC.

However, in RQO 15-04, the Ethics Commission stated that there is no language in Subsection 2-11.1 (d), or in any other opinion previously issued by this Commission, that specifies that, to be considered "affected," an entity must be the applicant or requester of the contemplated board action. The opinion goes on to state that a public official may have a voting conflict if the public official has significant ties to a private party that stands to reap substantial and material benefits or detriment from a vote taken by the board.<sup>4</sup>

While it could therefore be argued that the Lasarte Law firm is an "affected" party which stands to reap substantial and material benefits or detriment on the matters for which it directly represents Aecom, which are under consideration by the BCC, you are not an employee of the Lasarte Law Firm, rather, your adult step-son is.

As regards to adult family members, in this case your step-son, Mr. de la Rosa, our prior opinions on the issue of a voting conflict have narrowly considered whether some special benefit "might" flow from a vote to a close family member that has a prohibited relationship with the entity that will be affected by the vote.<sup>5</sup>

As noted in RQO 15-04, the word "might" in the analysis of Sec. 2-11.1(d) of the Ethics Code requires, at the very least, "a reasonable possibility of profit or enhancement." The opinion notes that "the standard applied should require more than a remote or speculative possibility, it should cover a potential benefit that may be realistically expected to occur under known circumstances."

The rationale underlying those "family member" opinions focuses on the unique impact that the matter under consideration could have on the elected official's family member and the corresponding possible enhancement, direct or indirect, on the voting official.<sup>6</sup>

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<sup>3</sup> See RQO 15-04.

<sup>4</sup> Specifically, RQO 15-04, dealt with two zoning requests which doubled the size of Bal Harbour Shops and permitted the sale and relocation of the Village Hall at the shopping mall's expense to provide land for the expansion. Under the proposal, the Neiman Marcus store, which was not the entity that applied or requested the contemplated board action, would grow in size by 50%. The Ethics Commission concluded that the expansion could directly or indirectly benefit Village of Bal Harbour Councilman Jaime Sanz, as he was a store department manager at the affected Neiman Marcus, creating a conflict of interest. The opinion directed him to remove himself from any discussion or vote related to the zoning application and recommended that Councilman Sanz avoid appearing at any workshops or meetings regarding the shopping center expansion plan, so as to avoid the appearance of impropriety.

<sup>5</sup> See INQ 19-19, INQ 19-18, INQ 19-001, INQ 18-256, INQ 13-211, INQ 11-85.

<sup>6</sup> For example, in RQO 12-15, the Ethics Commission held that a Commissioner may participate in hearings and vote on a zoning application related to Florida Power & Light even though the Commissioner's daughter was employed as a contract worker by FPL. The opinion not only stated the fact that the daughter was one of approximately 4000 workers employed by FPL, but more significantly, it noted that the Ethics Commission considered the relatively low-level employment held by the Commissioner's daughter at FPL and the fact that there is no expectation that the daughter's job would be enhanced or affected by the outcome of the pending zoning application.

In the present situation, Section 2-11.1(d) of the Ethics Code would not impose a blanket prohibition on your participation or voting on all Aecom matters where the Lasarte Law Firm is engaged, simply because your adult step-son, who is a law student, works at the firm as a low-level legal assistant.<sup>7</sup> However, you may not vote on a matter if there is a reasonable possibility that you or your step-son would or might, directly or indirectly, profit or be enhanced by the vote.<sup>8</sup>

Further, please note that Section 2-11.1(g) of the Ethics Code, *Exploitation of Official Position*, prohibits an official from using his or her official position to secure special benefits and/or exemptions for himself or others, including his immediate family, except as permitted by law. Under this section, a decision to award a contract to a company that employs the official's family member could be a form of exploitation.<sup>9</sup>

Similarly, exploitation could be found if the official's family member, while not employed by the company that would be affected by the vote, was engaged in lobbying, directly or indirectly, in support of company that did not employ him.<sup>10</sup>

Accordingly, Commission staff previously provided an opinion to Mayor Carlos Gimenez, a non-voting official but with final executive authority over significant procurement and governance matters, whose son was at the time employed by Becker Poliakoff, a firm that, like the Lasarte Law Firm, was representing parties transacting business with the County. With regard to the Mayor's son, the Mayor could exercise legal authority on matters where his son's employer, Becker Poliakoff, was retained by a party transacting business with the County. However, if his son was directly involved or assigned by the law firm to lobby or advocate on the specific matter, then Section 2-11.1(g), would prevent his involvement.

Consequently, the Ethics Commission held in this case that if Mr. de la Rosa has been assigned to work by the Lasarte Law Firm on the Aecom matter that is pending consideration by the BCC, then you should not participate or vote on that specific matter.

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<sup>7</sup> See RQO 12-15, and INQ 13-211.

<sup>8</sup> See RQO 06-64 (the Ethics Commission recommended that City of Coral Gables Commissioner Maria Anderson should abstain from voting on matters related to a company that was providing online lobbyist registration capabilities to the city. The prime company, [onlinelobbyist.com](http://onlinelobbyist.com), had subcontracted with Trapezoid Technologies, LLC, an entity partially owned by Commissioner Anderson's spouse); and INQ 13-92 (an elected official was advised not to vote or participate in the consideration of an alternative code enforcement system because the official's spouse was the municipal code compliance director. Therefore, the reorganization of the code compliance department, including the use of special masters, would impact the spouse's job duties, and thus the elected official would or might directly or indirectly be enhanced by the vote).

<sup>9</sup> See INQ 16-123 (The interaction between a municipal chief of staff [through his government position] and FIU officials in an attempt to influence his daughter's application with FIU's Frost Museum "could easily be perceived as an Exploitation of Official Position..."); See also INQ 15-119 (AIPP trust member cannot participate or vote on any item involving her artist husband, as such action would create a conflict); and RQO 17-05 (among other reasons, Miami-Dade County's Curator and Artist Manager could not perform what may be considered a ministerial role in the award of a contract to her domestic partner, because it would be considered exploitation of her official position).

<sup>10</sup> See INQ 11-133.

Conclusion

Section 2-11.1(d) of the Ethics Code does not impose a blanket prohibition your participation or voting on all Aecom matters where the Lasarte Law Firm is engaged, simply because your adult step-son, who is a law student, works at the firm as a low-level assistant. However, you may not vote on a matter if there is a reasonable possibility that you would or might, directly or indirectly, profit or be enhanced by the vote.

Consequently, if Mr. de la Rosa has been assigned to work by the Lasarte Law Firm on the Aecom matter that is pending consideration by the BCC, then you should not participate or vote on that specific matter as it may be considered a voting conflict under Section 2-11.1(d) of the Ethics Code, and an exploitation of your official position., pursuant to Section 2-11.1(g) of the Ethics Code.

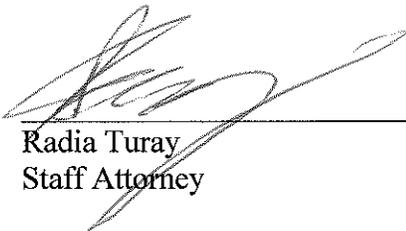
Further, please note that that the Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address “appearance of impropriety” issues that should guide the actions of all public servants, nor does it address the subjective mindset of an elected official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal or family considerations. Any public servant under such circumstances must use his or her own judgment in determining the proper course of action.

This opinion is limited to the facts as presented to the Commission on Ethics and is further limited to an interpretation of the County Ethics Code only. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.



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Jose J. Arrojo  
Executive Director



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Radia Turay  
Staff Attorney