
From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, November 03, 2015 2:33 PM
To: Sanchez, Rodzandra (COE)
Subject: Phyllis Smith, Councilmember, City of North Miami Beach (Voting Conflict) INQ 15-248

[INQ 15-248 Smith](#)

From: Centorino, Joseph (COE)
Sent: Tuesday, November 03, 2015 2:13 PM
To: 'phyllis.smith@citynmb.com'; 'Phyllis Smith'
Cc: Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE)
Subject: INQ 15-248 Phyllis Smith, Councilmember, City of North Miami Beach (Voting Conflict)

Councilwoman Smith:

You have inquired regarding whether you may abstain due to a voting conflict in participating and voting on an issue coming before your board involving an application for a zoning variance, in which the applicant is represented by an attorney who is also representing you personally as a private attorney on an unrelated matter.

Under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, you could have a conflict if the vote on the issue in question would or might cause you, directly or indirectly, to profit or be enhanced by the action. Although it is speculative for me to conclude this without more information, if you felt that due to your relationship with the private attorney, your vote would or might provide you with some type of benefit or advantage, e.g., in terms of future services or fees connected to the attorney's representation of you, then that could cause a voting conflict on this matter under Section 2-11.1(d) of the County Code. However, it may be possible to avoid such an occurrence by clearly indicating to the attorney involved that your ongoing professional relationship with him/her would need to be an arms-length one.

Perhaps more significantly, since it appears that this vote will occur in connection with a quasi-judicial hearing on a zoning application, you may have the right to abstain under Section 286.012, Florida Statutes, which provides, in part, that, "If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such a matter if the abstention is to assure a fair proceeding free from potential bias or prejudice." Based upon a conversation I had recently with the General Counsel for the Florida Commission on Ethics, this is a lesser and more subjective standard than those contained for conflict of interest in Chapter 112, Florida Statutes. It is also a more subjective standard than those under our County Code of Ethics for conflict of interest. This standard for abstaining from a vote does not actually require that there be a legally recognizable conflict of interest, but is based on the due process requirements regarding fairness in a quasi-judicial proceeding. If you feel that, due to the nature of your ongoing professional relationship with the attorney appearing before your board, you may be compromised in your ability to judge the issue objectively without regard to that relationship, or whether the fairness of the proceeding might suffer thereby under these circumstances, then you may consider abstaining under that section. I must advise you, however, that inasmuch as this agency is not empowered to provide binding interpretations of state statutes, this is only a nonbinding advisory opinion. If you want to obtain a binding advisory opinion from the state, you would need to request such an opinion from the Attorney General of the State of Florida. The Florida Commission on Ethics, which has authority over Chapter 112, also may not be in a position to advise you concerning Section 286.012.

In the event that you decide to abstain from the vote, I would advise you to follow the same procedures as are outlined in the County Code of Ethics and in Chapter 112, Florida Statutes, by announcing your abstention and reason therefor during the public meeting prior to the vote, leaving the room during the discussion and vote, and filing State Form 8B with the Clerk within 15 days of the vote.

Sincerely,
Joe Centorino

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



From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, November 04, 2015 11:01 AM
To: Sanchez, Rodzandra (COE)
Subject: Phyllis Smith, Councilmember, City of North Miami Beach (Voting Conflict) INQ 15-248

[INQ 15-248 Smith](#)

From: Centorino, Joseph (COE)
Sent: Tuesday, November 03, 2015 5:05 PM
To: 'Smith, Phyllis'
Cc: Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE)
Subject: RE: INQ 15-248 Phyllis Smith, Councilmember, City of North Miami Beach (Voting Conflict)

Phyllis, while no one is questioning your intent to be as fair as possible. Nonetheless, there are times when your judgement could be influenced by some outside factor, even unintentionally. If you feel your judgement on this matter might be influenced by the fact that your personal attorney is involved in the presentation, that is sufficient in my opinion for you to recuse yourself on this matter in order to insure a fair proceeding.
Joe Centorino

From: Smith, Phyllis [<mailto:phyllis.smith@citynmb.com>]
Sent: Tuesday, November 03, 2015 4:38 PM
To: Centorino, Joseph (COE) <CENTORI@miamidade.gov>
Subject: Re: INQ 15-248 Phyllis Smith, Councilmember, City of North Miami Beach (Voting Conflict)

Mr. Centorino,
Thank you for taking the time yesterday and today regarding the matter of my voting on a project that will be coming before our council tonight.
The reason this project is coming before us is for site plan approval and conditional use (a hotel as part of the mixed use).
Although it is not for a variance, this is still a quasi-judicial matter and, therefore would follow under the guidelines to recuse myself from voting as you explained to me.
Although, I know I would be very true to the responsibility of an unbiased vote, the appearance in this process may be different to observers. I would not want a vote that I cast to give an opportunity for someone to play the system of a quasi-judicial project.
If I am stating it correctly, I will be recusing myself based on the object of "fair proceedings".
Please correct me if needed.
Thank again for your time, kindness and knowledge.

Sincerely,
Phyllis Smith
Councilwoman
City of North Miami Beach

Joe, was going to go with the above until I was in a conversation with my city Atty. Will have to re-think all of this again.
Thank you, thank you.

Sent from my iPhone

On Nov 3, 2015, at 2:13 PM, Centorino, Joseph (COE) <CENTORI@miamidade.gov> wrote:

Councilwoman Smith:

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Sincerely,
Joe Centorino

Joseph M. Centorino
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