

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