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INQ 16-125 Dubois

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**From:** Centorino, Joseph (COE)

**Sent:** Friday, April 22, 2016 2:47 PM

**To:** 'jdubois@palmettobay-florida.gov' <jdubois@palmettobay-florida.gov>

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**Subject:** INQ 16-125 John Dubois, Vice Mayor, Village of Palmetto Bay (Voting Conflict)

Vice Mayor Dubois:

This will confirm our recent conversation in which you inquired concerning a voting conflict that you have in connection with an upcoming vote before the Village Council of Palmetto Bay. The vote will determine the future of a development in the Village. You acknowledged that you have a voting conflict of interest since you own property very close to the proposed development. Because the development could affect your property and you may have a personal and financial interest in the vote, it is a matter that falls under Section 2-11.1(d) of the County Code of Ethics as well as Section 112.3143, Florida Statutes. Your question was directed to what limitations there are on your participation in the Council's deliberations, both inside and outside of the Council chamber.

As an elected official with a voting conflict of interest, there are three things you must do at the time that the matter arises. Section 112.3143, Florida Statutes, requires that, prior to the vote and any deliberations on the issue, you must publicly declare that, you have conflict of interest due to your personal stake in the outcome of the vote, and also that within 15 days of the vote, you must file Form 8B (attached) with the Clerk of the Board, again publicly disclosing the conflict. Further, Section 2-11.1(d) of the County Code requires that you must absent yourself from the chamber during the discussion and vote, and you may not participate in any way in the deliberation.

The prohibition against participation would also include any appearance before the Council, even as an interested citizen to address it regarding this issue. It would make no sense to permit such involvement where the ordinance clearly requires your absence from the meeting during the deliberation and vote.

In regard to what activity you may engage in outside of the Council venue, the County Code requires that you not "participate in any way in said matter." The County Code does not define the word "participate," but Section 112,3143(4)(c) is instructive in connection with the meaning of the same word under the State voting conflict provision: "...the term participate means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction." Therefore, you should not speak at any meetings or gatherings where the purpose of the discussion relates to any attempt to influence the decision of the board or advise anyone on what to say or how to testify at the Village Council hearing. Based upon RQO 15-04, which interprets the County voting conflict requirements, it is also suggested that you avoid appearing at any nongovernmental workshops or meetings organized by interested parties in the Village to discuss the development plan. In short, you should avoid any situation where it may be perceived that you are using your position as Vice Mayor to influence the discussion or vote on the issue pending before the Village Council.

It is to your credit that you had the foresight and sensitivity to ethical requirements to have requested an opinion on this matter.

*Joseph M. Centorino*

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