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INQ 16-175

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**From:** Murawski, Michael P. (COE)

**Sent:** Friday, July 01, 2016 11:32 AM

**To:** DLehtinen@LSRCF.com

**Cc:** Centorino, Joseph (COE) <CENTORI@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>;

Perez, Martha D. (COE) <perezmd@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>

**Subject:** FW: requests for opinion

Dear Mr. Lehtinen:

In response to your request for opinion attached, please be advised as follows:

Question 1:

With regard to question #1, the response is in the affirmative. A sitting Council member must recuse him or herself from voting or participating in any way when the Village is voting on whether or not to sue an individual for injunctive relief due to unauthorized use of the municipal seal or logo, when the individual who would be sued is a declared candidate for election against the sitting Council Member. Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics is referenced. That provision provides, in pertinent part, that “ Any person included in the term defined in Subsection (b)(1) who...would or might, directly or indirectly, profit *or be enhanced* by the action of the Board...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.” (emphasis added)

In RQO 15-04, the Ethics Commission opined that the word “might” indicates that, at the very least, a reasonable possibility of profit or enhancement would trigger the prohibition. While 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. In the instant case, your Council is voting to decide whether or not to sue for injunctive relief, a Council Member’s main political rival and declared candidate in an upcoming election. It is not unreasonable to believe that such an action might enhance the sitting Council Member. For example, the candidate may now have to be distracted away from campaigning in order to deal with the injunction lawsuit and utilize valuable resources that may have otherwise gone into the campaign for office. Additionally, such a lawsuit may provide useful fodder for the sitting Council Member to use against the rival candidate during their campaign. In RQO 15-04 the Ethics Commission defined “enhanced” to mean “a benefit broader in concept than a measurable financial profit, including an improved professional or social position...”

Accordingly, it’s my opinion that the sitting councilperson must recuse themselves from participation in this matter.

Question 2:

With regard to question #2 the response is in the negative. A sitting councilperson who is a creditor ( i.e. is owed a debt by the person the Council is voting to sue for injunctive relief) need not recuse himself from voting or participating on the matter. INQ’s 12-168 and 14-118 deal with situations where the elected official is the debtor and the person or entity affected by the vote of the council is the creditor. In those cases we have advised the elected official to recuse

themselves from voting. I am unable to find any opinions where the elected official is the creditor. With regard to the debtor/creditor relationship, Section of 2-11.1(d) of the Code states: “[N]o person included in the term defined in Subsection (b)(1) shall vote on participate in any matter presented to the Board of County Commissioners if said person has any of the following relationships...debtor, or creditor, if in any instance the transaction or matter would affect the person defined in Subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally.” In other words, if the vote to sue the individual for injunctive relief *would affect* the creditor/councilperson in a manner distinct from the public generally then the councilperson must recuse himself. The presence of a debtor/creditor relationship however is not, per se, a conflict that demands recusal. Based upon the information you provided, the council vote relates to the injunction and not to any matter related to the creditor /debtor relationship. Here, the lump sum owed by the debtor to the creditor is due in two months and there is no information presently known as to that person’s ability to pay. Your suggestion that the mere existence of such a lawsuit ( a lawsuit for injunctive relief) *may* impair the ability of the debtor to obtain financing or otherwise obtain other funds to pay the creditor Council Member, seems speculative at best.

However, if the creditor/Council Member is concerned that voting to authorize the lawsuit might hamper the ability of his debtor to pay him back, then the council person would be placing his own private interests above the interests of the Village and should recuse himself.

Keep in mind that this opinion is based on the limited set of facts provided. Additionally, this opinion interprets only the Miami-Dade County Conflict of Interest and Code of Ethics. For an opinion as to whether or not this activity is permitted or prohibited under State law, please contact the State of Florida Ethics Commission.

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**From:** [Dwlehtinen@aol.com](mailto:Dwlehtinen@aol.com) [<mailto:Dwlehtinen@aol.com>]

**Sent:** Thursday, June 30, 2016 11:20 AM

**To:** Murawski, Michael P. (COE)

**Subject:** Re: requests for opinion

The request for advice is attached. Thx.

Dexter

To: Miami-Dade Commission on Ethics and Public Trust

From: Dexter Lehtinen, Village Attorney  
Village of Palmetto Bay, Florida  
[dwlehtinen@aol.com](mailto:dwlehtinen@aol.com)  
dlehtinen@lsrcf.com

Subj: Obligation to Recuse in Voting by Municipal Council Members

Date: June 30, 2016

As Village Attorney for the Village of Palmetto Bay, I would appreciate your consideration of the following issues:

1. Must a municipal Council Member recuse himself from voting on whether the municipality will file a lawsuit for injunctive relief against a resident who clearly violates municipal code restrictions against unauthorized use of the municipal seal or logo, when the individual who would be sued is a declared candidate for election against the Council Member?
2. Must a municipal Council Member recuse himself from voting on whether the municipality will file a lawsuit for injunctive relief against a resident who clearly violates municipal code restrictions against unauthorized use of the municipal seal or logo, when the individual who would be sued is in debt (debtor) to the Council Member (creditor) for approximately \$500,000, with payment due in lump sum within two months, and the existence of such a lawsuit may impair the ability of the debtor to obtain financing or otherwise obtain other funds to pay the creditor Council Member (based upon common understanding without any specific information in this regard)?

Thank you for your attention to this matter.