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INQ 16-97 Pepe

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**From:** Centorino, Joseph (COE)  
**Sent:** Friday, March 25, 2016 4:13 PM  
**To:** 'Thomas Pepe' <tpepe@southmiamifl.gov>  
**Cc:** Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>  
**Subject:** RE: INQ 16-97 Thomas Pepe, City Attorney, City of South Miami (Voting Conflict, Advisory Board Member)

Mr. Pepe:

Since the filing requirement falls under State law rather than County Ordinance, I am not in a position to give a definitive answer to you. That can only be provided by the Florida Commission on Ethics.

Since the plain language of the statute states that the filing is to be made after the vote occurs, I would interpret that to require the filing only after an actual vote has occurred, but, as I have said, a binding opinion on this can only be rendered by the FCOE.

### *Joseph M. Centorino*

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**From:** Thomas Pepe [<mailto:tpepe@southmiamifl.gov>]  
**Sent:** Friday, March 25, 2016 3:54 PM  
**To:** Centorino, Joseph (COE) <[CENTORI@miamidade.gov](mailto:CENTORI@miamidade.gov)>  
**Cc:** Turay, Radia (COE) <[Radia.Turay@miamidade.gov](mailto:Radia.Turay@miamidade.gov)>; Perez, Martha D. (COE) <[perezmd@miamidade.gov](mailto:perezmd@miamidade.gov)>; Diaz-Greco, Gilma M. (COE) <[GDIAZGR@miamidade.gov](mailto:GDIAZGR@miamidade.gov)>; Payne, Nkenga <[NPayne@southmiamifl.gov](mailto:NPayne@southmiamifl.gov)>; Menendez, Maria M. <[MMenendez@southmiamifl.gov](mailto:MMenendez@southmiamifl.gov)>; 'David, Stephen' <[SDavid@southmiamifl.gov](mailto:SDavid@southmiamifl.gov)>  
**Subject:** RE: INQ 16-97 Thomas Pepe, City Attorney, City of South Miami (Voting Conflict, Advisory Board Member)

You indicated that the form had to be filed following the vote. What if the item is read and then dies for lack of a second, or, the item is deferred to another meeting, or the item is tabled, does the disclosure form still need to be filed?

Thank you.

*Thomas F. Pepe*

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**From:** Centorino, Joseph (COE) [<mailto:CENTORI@miamidade.gov>]

**Sent:** Friday, March 25, 2016 1:35 PM

**To:** 'tpepe@southmiamifl.gov' <[tpepe@southmiamifl.gov](mailto:tpepe@southmiamifl.gov)>

**Cc:** Turay, Radia (COE) <[Radia.Turay@miamidade.gov](mailto:Radia.Turay@miamidade.gov)>; Perez, Martha D. (COE) <[perezmd@miamidade.gov](mailto:perezmd@miamidade.gov)>; Diaz-Greco, Gilma M. (COE) <[GDIAZGR@miamidade.gov](mailto:GDIAZGR@miamidade.gov)>

**Subject:** INQ 16-97 Thomas Pepe, City Attorney, City of South Miami (Voting Conflict, Advisory Board Member)

Mr. Pepe:

You have inquired concerning the County Ethics Code requirement that an advisory board member who has a voting conflict of interest must absent himself or herself from the room during the discussion and vote on the item in question. You have also inquired concerning whether there is a county disclosure form setting forth this more restrictive rule.

The procedure to be followed where there is a voting conflict of interest is spelled out in Section 2-11.1(d) of the Ethics Code, which states the requirement that the board member absent himself or herself from the room during the discussion. This is stricter than the requirement under State law, which only requires announcement at the meeting and filing of a conflict disclosure form (Form 8B) within 15 days of the vote. Under some circumstances, the State Code even permits discussion, which is never permitted under the County Code. While Section 2-11.1(d) applies to elected officials, the same procedure has generally been required of advisory board members having a voting conflict of interest under Section 2-11.1(v) of the County Code. See, e.g., INQ's 10-64, 13-165, 14-67 and 14-244. Please note, however, that the standard for determining a conflict of interest for an advisory board member under Section 2-11.1(v) of the County Code is considerably looser than that for elected officials. For there to be a voting conflict of interest under the latter provision, there would need to be a direct effect on the board member **and** board member would have to have one of several enumerated relationships with a person or entity appearing before the board. In the event of such a conflict, however, the board member should absent himself or herself from the meeting as previously indicated.

Due to the fact that there are different requirements for abstaining board members under County and State law, we have generally advised that an individual follow both voting conflict procedures, i.e., announce the conflict publicly at the meeting, absent himself or herself during the discussion and vote, and file the State Form 8B after the vote. There is

no corresponding County disclosure form for State Form 8B, so the State Form should be used in all cases involving a voting conflict.

If you have any further questions about this procedure, please contact me.

Sincerely,

Joe Centorino

## *Joseph M. Centorino*

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**From:** Thomas Pepe [<mailto:tpepe@southmiamifl.gov>]  
**Sent:** Friday, March 18, 2016 10:24 AM  
**To:** Diaz-Greco, Gilma M. (COE) <[GDIAZGR@miamidade.gov](mailto:GDIAZGR@miamidade.gov)>  
**Subject:** Form for Disclosure of Conflict

The state form for disclosing a conflict states that an appointed board member may not vote on an item for which he or she has a financial interest, but may debate the issue and attempt to persuade the board to vote in a manner that would benefit the board member. It is my understanding that the County prohibits such conduct and requires that the board member be absent from the area where he can be seen by the other board members during the debate and the vote on the item. Is that correct? If so, does the county have a disclosure form that sets forth this more restrictive rule?

I have another question along the same lines but I will send it in a separate email so that the two issues do not get confused.

## *Thomas F. Pepe*

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