

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, October 02, 2017 1:41 PM
To: Sanchez, Rodzandra (COE)
Subject: Frank Quesada, Commissioner, City of Coral Gables (Voting Conflict) INQ 17-237
Attachments: Fernandez v. FPL - Complaint.pdf; FPL Case - Recusal Email.pdf; votingconflictForm8B.pdf

INQ 17-237 Quesada

From: Centorino, Joseph (COE)
Sent: Thursday, September 28, 2017 3:58 PM
To: 'frank@coralgables.com' <frank@coralgables.com>
Cc: 'Leen, Craig' <cleen@coralgables.com>; 'Ramos, Miriam' <mramos@coralgables.com>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 17-237 Frank Quesada, Commissioner, City of Coral Gables (Voting Conflict)

Commissioner Quesada:

This is in response to your inquiry and in confirmation of our previous discussions concerning whether you would have a voting conflict of interest under Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance in voting on issues pertaining to the City's possible law suit against Florida Power and Light (FPL) based on its response to the problems generated by Hurricane Irma, as well as issues that may arise regarding the City's response to such issues on its own accord, or other issues that may relate to FPL.

This issue was raised by you due to your partnership in MSP Recovery, a law firm that has a pending law suit filed against FPL. The suit in question is a class action law suit filed against FPL on behalf of FPL customers in the State of Florida who were assessed monthly storm charges imposed by FPL through the Public Service Commission. The claim asserts that FPL failed to take preventative steps to improve its power plant grid and distribution lines, as well as to remove and trim trees, measure that would be taken in connection with those charges, that could have avoided the types of power outage and restoration problems experienced in the State due to the hurricane. Concurrently, the City of Coral Gables has adopted a resolution directing the City Attorney's Office to take enforcement action against FPL, related to the power outages in the City. That resolution will be leading to communications, discussions and/or negotiations between the City and FPL which could, if inconclusive, result in the City's filing its own law suit based on a contract claim under the City's franchise agreement with FPL, a separate legal theory from the one asserted in the MSL law suit, or, alternatively, a pre-suit settlement of the City's claims. Such actions would likely involve further action by City Commission. In addition, there are other actions that have been or may be taken by the City that could relate generally to the electrical power outage issues created by the hurricane, including the possibility of the City's moving its power lines underground and the formation of a Blue Ribbon Committee (of which you would not be a member) to consider recommending further actions in connection with the management of the type of emergency issues faced by the City in the aftermath of the hurricane. There may also be issues coming before the Commission that would relate to or have an impact on FPL apart from the issues and legal claims raised in regard the hurricane impact and its aftermath.

Any possible conflict that you may have in your role as City Commissioner would be governed by Section 2-11.1(d) of the Ethics Code. That section includes a prohibition that would arise in the event that you have one of a number of enumerated relationships with an entity that might be affected, directly or indirectly by an action of the board, including "partner." It also includes a prohibition that would apply to you if you "might, directly or indirectly, profit or be enhanced" by an action of the Commission.

I understand that the issues and the scope of your firm's suit against FPL, in which your firm has a financial interest, and the City's legal claims against FPL, are considerably different. However, the fact that they both include consideration of overlapping evidence regarding the same underlying power outages, as well as FPL performance issues related to the hurricane, has led me to conclude that you should recuse yourself from any vote regarding any law suit or settlement of legal claims against FPL by the City to avoid a possible voting conflict of interest. I would not see any likely conflict of interest regarding any vote that relates only to actions to be taken by the City on its own accord and without regard to its claims against FPL or to FPL's past or future performance concerning the hurricane power outages. Accordingly, I do not see any voting conflict regarding votes that may be taken concerning the City's consideration of moving its power lines underground or its creation of a Blue Ribbon Committee to consider emergency management policies that do not relate to FPL. Regarding other issues that may be coming before the Commission that may concern FPL, but are as yet unknown or unformulated, I think that it would be prudent during the time that your firm's law suit is pending, for you to seek guidance from us in advance of such votes. This is due to the possibility that there may be an indirect impact on the prosecution of your firm's suit, even though an issue does not directly concern the suit or any of the underlying evidentiary issues in the suit. There may also arise a situation where there is no legal conflict, but rather an appearance of a possible conflict, to which you should at least be alerted.

For those issues from which you will recuse yourself, you will need to follow the provisions of Section 2-11.1(d) of the County Ordinance as well as Section 112.3143, Florida Statutes. Prior to the issue being taken up at any meeting, you should announce publicly the nature of the conflict; absent yourself from the chamber during the discussion and vote on the issue; and file State Form 8B (attached) with the Clerk within fifteen (15) days of the vote.

If there are any questions you have concerning this opinion, please call me or have your City Attorney's office contact me. Thank you for having the foresight to seek guidance on this matter prior to taking any action.

Sincerely,

Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
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From: Quesada, Frank [<mailto:frank@coralgables.com>]

Sent: Wednesday, September 20, 2017 3:57 PM

To: Ramos, Miriam <mramos@coralgables.com>

Cc: Leen, Craig <cleen@coralgables.com>; Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>

Subject: Re: FPL issue

Joe Centorino,

As discussed yesterday, please find the attached documents you requested:

1. the Complaint in Fernandez v. FPL and
2. my recusal email to my law firm.

As discussed, if the City of Coral Gables does proceed with a law suit against FPL I will also recuse myself from the matter. Although upon my review of the applicable regulations I do not believe that I have a conflict, it's important the City's issues are central to the dispute and not whether I have a conflict.

However, I would like to confirm that I can propose legislation, address and vote on issues related to FPL (unrelated to any potential law suit brought by the City), City utilities and related issues that regularly arise in the normal course of our City proceedings.

Thank you,

Frank Quesada
City Commissioner
Coral Gables

From: Ramos, Miriam
Sent: Tuesday, September 19, 2017 12:05:13 PM
To: Quesada, Frank
Cc: Leen, Craig; Joe Centorino
Subject: FPL issue

Commissioner,

We spoke to Joe Centorino of the Miami-Dade Ethics Commission and he agrees with your course of action regarding recusing from any matter involving the City's FPL lawsuit. Other matters involving FPL require close analysis in order to determine whether a voting conflict exists.

Mr. Centorino is available to speak with you in order to issue you an opinion regarding any vote involving FPL outside of the lawsuit. He is copied here and may also be reached at (305) 350-0613. As always, we are available as well.

Sincerely,

Miriam S. Ramos
Deputy City Attorney & City Prosecutor
City of Coral Gables

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

From: [Frank Quesada](#)
To: [John Ruiz](#)
Subject: FPL Case - Recusal
Date: Tuesday, September 19, 2017 8:53:00 AM

John,

As previously discussed, I cannot be involved in this matter. As I am a City Commissioner and the City of Coral Gables is currently in a litigation posture with FPL, it's best if I am not involved in this matter in any fashion.

Frank

Frank Quesada

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