

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, October 24, 2017 2:46 PM
To: Sanchez, Rodzandra (COE)
Subject: Jose Alvarez, Commissioner, North Bay Village; Mary Kramer (spouse) (Voting Conflicts) INQ 17-247

INQ 17-247 Kramer

From: Centorino, Joseph (COE)
Sent: Tuesday, October 24, 2017 2:23 PM
To: 'mary@marykramerlaw.com' <mary@marykramerlaw.com>
Cc: 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 17-247 Jose Alvarez, Commissioner, North Bay Village; Mary Kramer (spouse) (Voting Conflicts)

Ms. Kramer:

This is in response to your recent inquiry concerning whether the memberships or you husband, North Bay Village Commissioner Jose Alvarez, and yourself in the local Optimist Club would create a voting conflict of interest under Section 2-11.1(d) of the County Code of Ethics in connection with a possible vote regarding Village funding of that non-profit organization.

Voting conflicts for elected officials are governed by three separate standards in Section 2-11.1(d).

First, there is an automatic conflict requiring recusal if the member has any of the following relationships with a person or entity that is affected, directly or indirectly, by the vote: officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary;

Second, there is a voting conflict if the member would be affected, directly or indirectly, by the vote in a manner distinct from the manner in which it would affect the general public **AND** has one of the following relationships with the affected person or entity: stockholder, bondholder, debtor or creditor;

Third, the member "would or might, directly or indirectly, profit or be enhanced" by the vote.

The relationship of being a member of an affected organization, as opposed to an officer, employee, etc., does not, by itself, create a prohibited conflict. The fact that a Commissioner happens to be a member of a non-profit organization (or his spouse being a member) does not create an automatic voting conflict, because "member" is not one of the enumerated relationships in either of the first two standards in Section 2-11.1(d). If, on the other hand, the member were an officer or director of that organization, that would create an automatic voting conflict. The fact that the affected entity is a non-profit organization, as opposed to a for-profit business, has no bearing on the issue.

The third standard, however, is easily the most stringent standard to consider, and it creates a very broad standard that must be applied to the particular circumstances of the member. If someone might personally profit or be enhanced, directly or indirectly, by the vote there would be a voting conflict. In RQO 15-05, the Ethics Commission interpreted this to mean that there is a "reasonable possibility" that the individual would receive some benefit from the action. However, unless the vote on providing a grant by a municipality to a non-profit entity would or might personally affect the member, then it would not create a voting conflict. For instance, if the member might receive some personal benefit from the grant, by way of some payment or some special recognition, then it could create a conflict. Although

there is no mention of a benefit to a spouse in this provision, if a spouse were to reap some special financial benefit, it could create a conflict for the member who might well also profit or be enhanced by that benefit. None of the circumstances that you have related indicate that this would likely be the case.

You should also bear in mind that under State law, Section 286.012, Florida Statutes, provides that, in the context of a quasi-judicial proceeding, there is more leeway for a board member to abstain from voting, regardless of the existence of a conflict of interest, where that member believes that he or she should not vote in order to insure a fair proceeding free of bias or prejudice.

I hope this provides you and your spouse with the requested guidance in these matters. Please let me know if you have any further questions.

Sincerely,
Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
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From: mary@marykramerlaw.com [mailto:mary@marykramerlaw.com]
Sent: Wednesday, October 11, 2017 3:58 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: RE: [FWD: Optimist membership]

Dear Mr. Centorino,

hi!

First, I want to make sure you know I make no "complaint." I think the Optimists are a great organization. But I do think the issue of fiduciary duty was not clarified at our Commission meeting and that some constructive advice for the future may be helpful. That's what I was looking for when I wrote to Ms. Turay, but I think I've worked it out in my own mind. See if you agree.

My husband Jose Alvarez was not at that meeting and I think technically our Optimist membership expired anyway. So for purposes of Mr. Limm's \$7,500 donation request and Dr. Hornsby's advocacy of said item, we were not involved. However, it looks like for the future, I will renew my membership; Jose probably will *not*. And any discussion of donations or in-kind support on the Commission will require Jose's disclosure that his spouse is a member. He might have to recuse based solely on my membership. (What do you think?)

The City Attorney focused on 501(c)(3) status as a nonprofit -- I think looking at the bigger picture of whether the village can make a donation to the entity.

For me, however, the independent issue is one of individual fiduciary duty, and this is what made me uncomfortable.

Again, no complaint here whatsoever--everyone involved means well-- more just my musings and seeking your thoughts and guidance. Please do not make this into a big thing because NBV is very sensitive about EVERYTHING right now and it is getting very hard to function with all the animosity swirling around.

Best,
Mary

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----- Original Message -----

Subject: RE: [FWD: Optimist membership]

From: "Centorino, Joseph (COE)" <Joseph.Centorino@miamidade.gov>

Date: Wed, October 11, 2017 3:32 pm

To: "'mary@marykramerlaw.com'" <mary@marykramerlaw.com>

Commissioner Kramer:

I apologize for not getting back to you sooner on this. If you still need an opinion regarding a possible voting conflict on this matter, please give me a call at the office at 305-579-2594 to discuss. It is a bit unclear to me exactly what relationship is the basis of the request, and, since we have been dealing with this issue recently and there may have been some contrary advice provided, I want to make sure I have the facts correct.

Joe Centorino

Executive Director

Miami-Dade Commission on Ethics and Public Trust

From: Turay, Radia (COE)

Sent: Wednesday, October 04, 2017 2:17 PM

To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>

Subject: FW: [FWD: Optimist membership]

Hello Joe,

I got the below from Mary Kramer. As she is asking a question regarding a Commissioner's duties, I decided to forward it to you.

Thanks,
Radia.

From: mary@marykramerlaw.com [<mailto:mary@marykramerlaw.com>]
Sent: Wednesday, October 04, 2017 11:16 AM
To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: [FWD: Optimist membership]

Dear Ms. Turay,
Hello how are you?
I would appreciate your opinion on the below issue. David Heit is the president of the Optimist board. The organization does great things, but since they have requested funding from the Village, I'm concerned about mine and especially my husband, a Commissioner's, fiduciary duty. I hope it's a quick and easy answer.
Thank you so much!
Mary

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----- Original Message -----

Subject: Optimist membership
From: <mary@marykramerlaw.com>
Date: Wed, October 04, 2017 11:11 am
To: dhcell@hotmail.com

Dear David,
Hello how are you!? I hope well. I want to thank you from the bottom of my heart for your leadership and all the good things that Optimist does.

I have given careful consideration to mine and Jose's renewal of membership. As you know, last week a request from Commissioner Limm was on the agenda for a \$7,500 donation. Commissioner Alvarez was not present at that meeting. Commissioner Hornsby heavily lobbied for a donation to Optimists and when another Commissioner recommended \$1,000, Commissioner Hornsby voted against it, saying: it's not enough. When a resident opined that this was a conflict of interest, the City Attorney said that as long as Optimists is a 501(c)(3), there is no violation. I believe that statement goes to the overall issue of a Village donation. But that is not my concern. My concern is the individual fiduciary duty of commissioners who are members of the private organization. In my humble opinion, and I could be mistaken, it is a violation of individual fiduciary duty to the Village to make motions, advocate, and vote for taxpayer funds for a private organization when one sits on the board and/or is a member. Again, this is not the issue of the Village making a donation, but individual lobbying and voting

by board and organization members. Ultimately I believe the Village Commission voted for \$1,000.

In addition, and more troublesome, if the donation by the Village was on your Optimist board meeting agenda, then the Commissioners may have inadvertently violated Florida Sunshine laws.

As a Commissioner's spouse, I am in just about the "same boat" in terms of potential violations of fiduciary duty.

Accordingly, before renewing, I am going to seek advice from Ethics about conflict of interest and fiduciary duty.

Rest assured this has nothing to do with the Optimist mission, which I greatly admire. Jose and I will always support through activities your mission. And if Ethics states that the \$amounts\$ are so low as to not pose a problem with fiduciary duty, I will immediately re-join. I will keep you posted on what Ethics says.

Thank you for your kind understanding. I have sat on many boards, and we all sign conflict-of-interest disclosure statements. So it comes up a lot and is not a "big deal," but nevertheless one I'd like to get sorted out in all prudence.

Big hug and again, THANK YOU!!!

Mary

P.S. this may be the Florida statute

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. [104.31](#).

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