

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, November 29, 2017 2:32 PM
To: Sanchez, Rodzandra (COE)
Subject: Oscar J. Braynon, Member, Citizens' Independent Transportation Trust (CITT)
(Prohibited Appearances, Section 2-11.1(m)(1) and 2-1421(i) INQ 17-271

INQ 17-271 Braynon

From: Ethics (COE)
Sent: Wednesday, November 29, 2017 2:20 PM
To: 'OSCAR J BRAYNON' <braynon@bellsouth.net>; Ethics (COE) <ethics@miamidade.gov>
Cc: Scurr, Charles (CITT) <Charles.Scurr@miamidade.gov>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>; 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>; Libhaber, Bruce (CAO) <Bruce.Libhaber@miamidade.gov>
Subject: INQ 17-271 Oscar J. Braynon, Member, Citizens' Independent Transportation Trust (CITT) (Prohibited Appearances, Section 2-11.1(m)(1) and 2-1421(i)

Mr. Braynon:

You have inquired concerning whether you may, while sitting as an appointed member of the Citizens' Independent Transportation Trust (CITT), may represent and lobby for a small engineering firm, EBS Engineering, in connection with a competitive selection process for services in the Miami-Dade County Department of Regulatory and Economic Resources (RER). It is my understanding that you would be paid for your services to EBS before RER. The CITT board, of which you are member, is a semi-autonomous board in Miami-Dade County responsible for the management of the 1/2% sales tax transportation fund. You have also indicated that you are a former employee in the Miami-Dade County Aviation Department, having retired in March 2014.

Since you ended your employment with the County more than two years ago, the Two-year Rule, Section 2-11.1(q), which prohibits County officials and employees from lobbying in the County for two years after the termination of County service, would not apply to you. However, as a member of a semi-autonomous board in Miami-Dade County, you would be governed by the provisions of Section 2-11.1(m)(2) of the County Ethics Code in connection with any appearances by you before any County board or agency on behalf of a third party, as well as the provisions of Section 2-1421(i) of the Miami-Dade County Code, which places additional restrictions on activity by CITT board members in the County.

Section 2-11.1(m)(2) would prohibit you from appearing before the CITT; from receiving compensation, directly or indirectly or in any form, for services rendered to a party who has applied for or is seeking some benefit from the CITT; or appearing before any court or administrative tribunal as counsel or legal advisor to seek any legal relief from the CITT. This section would not prohibit your representation of EBS Engineering as long as it does not involve the CITT in any way. You have indicated to me that the issue on which you would represent it is one that is before RER and that CITT has no participation whatsoever in that procurement process or the underlying contract.

Section 2-1421(i), which governs the operations of CITT, would prohibit you from lobbying, directly or indirectly, "the Mayor, County Commission, or any member of County staff regarding a project funded in whole or in part by surtax proceeds, or regarding any person or business bidding for or under contract for a project funded in whole or in part with surtax proceeds." It would also prohibit you from having "any interest, direct or indirect, in any contract with the County or in any corporation, partnership or other entity that has a contract with the County."

You have indicated that the contract with RER, if EBS were to be selected, would not be funded at all from transportation surtax funds. I have consulted with the staff of CITT and was informed that EBS Engineering is not the recipient of any funds from the transportation surtax.

The final issue is whether, as a lobbyist or representative of EBS in the RER procurement process, you would have an “interest, direct or indirect,” in a County contract under the CITT ordinance, Section 2-1421(i). This provision does not fall within the Ethics ordinance and I have not located any precedent regarding the interpretation of the term, “interest,” in the ordinance. However, I have consulted with both Assistant County Attorney Bruce Libhaber and CITT Director Charles Scurr. They both provided me with instances in which this issue has been raised, which have involved CITT members, either personally, or through a firm in which they had an ownership or financial interest, seeking a County contract. In such instances, those individuals have resigned from the CITT board in order to pursue those interests.

It is my understanding, however, that you have no financial or ownership interest in EBS, nor would you have such an interest in the contract proceeds, if EBS should be awarded the contract. Indeed, if EBS were to be awarded the contract, you would be prohibited from receiving any contingency or success fee from the contract award pursuant to Section 2-11.1(s)(7). While there is no exactly comparable issue concerning the interpretation of the word “interest” that arises under the County Ethics Code, there are references in the Code to “financial interest,” which has generally been interpreted to refer to an ownership interest in the entity or transaction. I would interpret the word “interest,” in Section 2-1421(i), therefore, to prohibit your lobbying on behalf of an entity or contract in which you had a financial or ownership interest. That would not prohibit your paid representation of EBS in connection with a contract with RER, which has no connection to CITT or the transportation surtax. This would not be inconsistent with prior interpretations of this section by CITT staff and the County Attorney.

Please be aware that, if you should get involved in any lobbying activity on behalf of EBS, you would be required to register as a lobbyist in the County pursuant to Section 2-11.1(s) of the Ethics Code, and to abide by all provisions in the Code pertaining to lobbyists, including the necessity of completing an ethics training course.

In the event that any of the facts on which this opinion is based should change, you should consult further with this agency.

Sincerely,

Joe Centorino

Joseph M. Centorino

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From: OSCAR J BRAYNON [<mailto:braynon@bellsouth.net>]
Sent: Monday, November 13, 2017 1:22 PM
To: Ethics (COE) <ethics@miamidade.gov>
Cc: Scurr, Charles (CITT) <Charles.Scurr@miamidade.gov>
Subject: Ethics Opinion Requested

Good afternoon Mr. Centorino;

I am respectfully requesting an opinion regarding my current status.

I currently sit as an appointed member of the Citizens Independent Transportation Trust, which is responsible for management of the ½ sales tax transportation fund.

I am a retired county employee from MDAD in March 2014.

I have been approached to represent a small engineering firm regarding an Engineering Selection Process for Services in the County's RER Department. There is no apparent relationship between the RER Department and the CITT. I will speak on the firm's behalf to ISD staff and possible members of the Board of County Commissioners (and their staff).

Could you please provide me an opinion regarding any possible Ethics violation or conflict of interest in this representation?

You may reach me by phone if you desire.

Thank you,
Oscar J Braynon
305.318.4286