

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Friday, March 03, 2017 3:13 PM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** Martin Marquez, Candidates, City of Miami Springs City Council (Sunshine Law) INQ 17-62

INQ 17-62 Marquez

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**From:** Centorino, Joseph (COE)  
**Sent:** Friday, March 03, 2017 3:07 PM  
**To:** 'Martin L. Marquez' <martin@urbanworks.net>  
**Cc:** Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>  
**Subject:** RE: Sunshine Law and Ethics Question

Dear Mr. Marquez:

You have asked for an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding whether there is any prohibition in the State of Florida Sunshine Law (Section 286.011, Florida Statutes) or in the Miami-Dade County Ethics Code that would prohibit a husband and wife from seeking and serving simultaneously on the same City Council. You have indicated that you and your wife, Kathie Marquez, are candidates for the City of Miami Springs City Council in the upcoming election in Miami Springs. If both of you were to be elected, you would be serving side-by-side on the same elected public body.

The Florida Sunshine Law is one of the strongest open meeting laws in the United States. It is distinguished from the open meeting laws in most states by the fact that it has been judicially interpreted to prohibit private conversations between any two board members regarding any matter that may foreseeably come before the board for action. The only other state that has such a clear prohibition is Colorado. In our experience, the most difficult aspect of the Sunshine Law for elected officials to adhere to is this prohibition against private communications by any two members of a public board. It has been the source of many investigations and a number of prosecutions in this County. Further, the Miami-Dade Ethics Commission often trains elected officials as well as County and municipal advisory board members in the requirements of the Sunshine Law. These trainings have usually included an admonition against two board members creating an appearance of impropriety by having private discussions in public places prior to and during public meetings, even when those discussions do not involve matters coming before the board. The purpose of such recommendations is the protection of the public trust, something that this agency is charged with doing.

There is no prohibition in the Sunshine Law against a husband and wife or two domestic partners, occupying seats on the same public board. As you are aware, the Office of the Attorney General of the State of Florida has issued an opinion stating that there is no *per se* violation of Section 286.011, F.S., where a husband and wife are both elected to a town council. AGO 89-06. However, the opinion emphasized that such individual would remain subject to all requirements of the Sunshine Law. We are in accord with that opinion.

Nonetheless, it must be acknowledged that the simultaneous service of a husband and wife on such a board is likely to create a questionable appearance that would lead some observers to believe that violations of the Sunshine Law were occurring. Spouses living together and sharing multiple joint activities and responsibilities attendant to the maintenance of a household must, perforce, engage in numerous private conversations out of public view. It would not be unreasonable for citizens of Miami Springs to suspect that during such conversations some references to City business would inevitably become the subject of some conversations, even if only inadvertently. The Sunshine Law is difficult

enough for unrelated individuals, who see each other only sporadically, to comply with. The inherent difficulties of two cohabiting spouses to completely avoid such prohibited conversations would be daunting for most couples. In situations where the two spouses vote together on controversial issues, especially if they were the only board members to take the position in question, would create serious appearances of impropriety, even if the spouses had adhered strictly to the letter of the law.

Although there is no prohibition in the County Ethics Code that would prohibit a husband and wife from occupying positions on the same board, such an arrangement could easily create further problems. The County ordinance on Conflicts of Interest in Section 2-11.1(d) of the Code is very strict in establishing a conflict of interest for an elected official where that official “would or might, directly or indirectly, profit or be enhanced” by the action of the Board. If one of two spouses maintaining a joint household with attendant expenses and financial obligations were to have a conflict of interest under this section, it is likely that the other spouse would have the same conflict of interest. Under such circumstances, both spouses would be prohibited from participating in the discussion or voting on the item in question. The mandatory recusal of two members of a five-person City Council, as exists in the City of Miami Springs, would automatically reduce the qualified voting memberships to a bare three-person majority. The recusal or absence of one other member would leave the Council without a majority of voting members. Such an eventuality could only be viewed as detrimental to the public interest in maintaining a healthy democracy.

Based on the foregoing, while it is my opinion that there is no legal prohibition against you and your wife occupying seats on the City of Miami Springs City Council, I must counsel and advise you that such an arrangement is likely to damage the public trust, and is, therefore, highly discouraged.

Sincerely,

*Joseph M. Centorino*

Executive Director and General Counsel  
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**From:** Martin L. Marquez [<mailto:martin@urbanworks.net>]  
**Sent:** Thursday, March 02, 2017 11:10 AM  
**To:** Centorino, Joseph (COE) <[Joseph.Centorino@miamidade.gov](mailto:Joseph.Centorino@miamidade.gov)>  
**Subject:** Sunshine Law and Ethics Question

Hello Mr. Centorino

Hope all is well.

We corresponded a while back regarding an issue I had while on the Miami Springs Planning Board. I have since resigned to run for City Council office to try and effect positive change in that manner since the system appears to have too many loopholes which are being abused.

The question I have at this time is if there is anything in the Florida Sunshine Laws or the Ethics Commission Laws that prohibit a husband and wife from seeking and serving for an elected office in the City of Miami Springs. We checked with the City Charter and it contains no prohibition against a Husband and Wife running and serving at the same time on a City Council. Apparently 49 states in the Union allow such an event and there are a dozen or so husband and wife teams serving on City and Village Councils throughout the country.

To that effect please see the recent write up in the Miami Herald:

<http://www.miamiherald.com/news/local/community/miami-dade/miami-springs/article135814498.html>

At this time we would like to obtain an official determination from your office if there is anything in the Florida Sunshine Laws or Dade County ethics codes that would prohibit my wife and I from running for and if elected serving on the Miami Springs City Council at the same time.

Thanks You in advance.

Kathie and Martin Marquez  
305-345-2953