

Prkic, Christina (COE)

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INQ  
05-17

**From:** David M. Wolpin [DWolpin@wsh-  
**Sent:** Tuesday, February 08, 2005 3:43 PM  
**To:** Prkic, Christina (COE)  
**Subject:** RE: Advice on Potential Voting Conflict

Thanks very much for your assistance.

David M. Wolpin, Esquire  
Weiss Scrota Helfman Pastoriza  
Guedes Cole & Boniske, P.A.  
2665 South Bayshore Drive, Suite 420  
Miami, Florida 33133  
Telephone: (305) 854-0800  
Facsimile: (305) 854-2323  
Email: [dwolpin@wsh-law.com](mailto:dwolpin@wsh-law.com)

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

**From:** Prkic, Christina (COE) [mailto:[cprkic@miamidade.gov](mailto:cprkic@miamidade.gov)]  
**Sent:** Tuesday, February 08, 2005 3:42 PM  
**To:** David M. Wolpin  
**Subject:** RE: Advice on Potential Voting Conflict

Hi David:

Robert Meyers and I reviewed your question below. Based upon the information you provide, the Council member should abstain from participating in and voting on the zoning matter. Section 2-11.1 (d) of the Code of Ethics provides in part,

Additionally, no person included in the term defined in subsection (b) (1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary... or if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally.

The Council member is the broker of record for the pension plan which was established by a closely-held corporate entity whose two main shareholders are seeking some kind of benefit from the City Council. Although the Council member is not per se an employee, clearly he has an employment-like relationship with the shareholders, by way of the corporate entity, and he could be terminated by the shareholders from his position as the broker of the pension fund. The shareholders even hired him initially to set up the fund.

Furthermore, you indicate that the Council member's business is managing and consulting with these various corporate-sponsored pension plans. Accordingly, the Council member for all intents and purposes is a "Consultant" to the shareholders, by way of their controlling financial interest in the corporation. Though the Council member is not paid by the corporate entity for his work as broker, he is employed in a fiduciary capacity to manage a fund that is sponsored by the corporate entity, whose main shareholders will be directly affected by the Council action.

Based upon these foregoing reasons, we conclude that the Council member has a voting conflict under Section 2-

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11.1 (d) of the Code of Ethics, and accordingly, may not participate in or vote on the matter pertaining to the shareholders of the corporate entity which owns and established the pension fund presently managed by the Council member.

Should you have any additional questions concerning this issue please do not hesitate to contact me at the number below.

Warm regards,

Christina Prkic  
Staff Attorney  
Miami-Dade County Commission on Ethics and Public Trust  
P: (305) 350-0615

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

**From:** David M. Wolpin [mailto:DWolpin@wsh-law.com]  
**Sent:** Tuesday, February 08, 2005 10:41 AM  
**To:** cprkic@miamidade.gov  
**Subject:** FW: Advice on Potential Voting Conflict

Hi Christina- here is the email. thanks.

David M. Wolpin, Esquire  
Weiss Serota Helfman Pastoriza  
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-----Original Message-----

**From:** David M. Wolpin  
**Sent:** Wednesday, February 02, 2005 5:01 PM  
**To:** David M. Wolpin  
**Subject:** FW: Advice on Potential Voting Conflict

David M. Wolpin, Esquire  
Weiss Serota Helfman Pastoriza  
Guedes Cole & Boniske, P.A.  
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-----Original Message-----

**From:** David M. Wolpin  
**Sent:** Wednesday, February 02, 2005 5:00 PM  
**To:** 'rmeyers@miamidade.gov'  
**Cc:** Stephen J. Helfman  
**Subject:** Advice on Potential Voting Conflict

Hi Robert-

Please provide your staff opinion on whether a Councilmember should abstain from voting and participation on a Council zoning item in which two businessmen who are not the applicants, but who would directly benefit by approval of the item, are controlling shareholders of a corporate entity for which the councilmember provides services as broker of record for the corporate retirement account. The businessmen are not in the retirement plan, but control the company that serves as the plan sponsor, and accordingly may theoretically decide to terminate the Councilmember's service as broker of record or let that service continue. The corporate sponsor of the retirement plan will not be affected by the action on the item.

**This item will be coming up at the February 8, 2005 Council meeting.**

My inclination is that, although abstention might be employed in order to avoid even the remote appearance of any impropriety, that there is not any applicable prohibition under the second paragraph of Sec. 2-11.1 (d) of the County Ethics Code, since the retirement plan sponsor is not the applicant or subject to being affected by the action on the item and any profit or enhancement to the Councilmember by virtue of his service as broker of record on the retirement plan is purely speculative. Please advise of your assessment on this. Thank you for your assistance, as usual.

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**Prkic, Christina (COE)**

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**Sent:** Wednesday, February 02, 2005 5:00 PM  
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**Cc:** Stephen J. Helfman  
**Subject:** Advice on Potential Voting Conflict

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

**From:** Tara L. Gould  
**Sent:** Friday, February 04, 2005 1:05 PM  
**To:** Stephen J. Helfman  
**Cc:** David M. Wolpin  
**Subject:** State Commission on Ethics

Hello -

I just spoke with Ms. Doss at the State. She indicated that based upon her review of the ethics opinions and our factual scenario there would not be a voting conflict under state law. The councilperson is retained by a corporation to act as a broker, etc. That corporation is his principal. There would be no special gain to that corporation - thus no special gain to a principal which retains the councilperson. I questioned her in detail about the relationship of the corporate shareholders to the corporation - whether the shareholders of the corporation because it is closely held could therefore be considered his principal. There are numerous opinions which state that the corporation is a separate entity from the shareholders or subsidiaries, etc. She stated that what benefits the shareholders personally doesn't necessarily benefit the corporation (which retains the councilperson).

She gave me opinion numbers for reference.

If we have any further questions we need to call her today because she is going on vacation next week.

Tara L. Gould, Esq.

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**Prkic, Christina (COE)**

---

**From:** David M. Wolpin [DWolpin@wsh-  
**Sent:** Tuesday, February 08, 2005 11:09 AM  
**To:** cprkic@miamidade.gov  
**Subject:** FW: State Commission on Ethics

Here is email reported on verbal ruling of the State.  
David M. Wolpin, Esquire

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**From:** David M. Wolpin  
**Sent:** Friday, February 04, 2005 3:15 PM  
**To:** 'Meyers, Robert (COE)'  
**Subject:** FW: State Commission on Ethics

Hi Robert- FYI, this is the State Ethics aspect of the matter that I very recently wrote to you about on February 2, concerning Councilmember who is a broker of record as described in my email.

David M. Wolpin, Esquire

Weiss Serota Helfman Pastoriza

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2/8/05