

Prkic, Christina (COE)

JND 05-26

To: jhernandeztorano@bellsouth.net

Subject: RE: Ethics Commission Opinion

Hi Jackie:

You requested an ethics opinion seeking clarification of any potential conflicts of interest as they relate to your position on Community Council #12 and several community activities in which you're involved. I will address each topic individually.

To begin, Section 20-45 provides that community council members are prohibited from voting on or participating in any way in any matter presented to the Community Council on which the member serves if the member 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 Community Council on which the member serves: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor, if in any instance the transaction or matter would affect the Community Council member in a manner distinct from the manner in which it would affect the public generally. Any Community Council member who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Community Council on which the member serves shall absent himself or herself from the Community Council meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

1. A conflict of interest is not automatically created should lawyers in your husband's law firm appear before your Community Council. You indicate that the firm has a land use group which, in the future, may appear before the Council on behalf of matters/clients unrelated to your husband's practice area. However, should your husband have a client or matter before the Council, you are encouraged to seek an ethics opinion for a determination based upon the specific nature of the question.
2. If you're an officer/director of your homeowner's association you would be prohibited from voting on matters involving the association, Sunkist Estates. In RQO 98-14, the Ethics Commission opined that Section 20-45 prohibited the director of a condo association from participating in any way in any consideration by the Community Council of the zoning matter involving her condominium association. Further, the opinion suggested that the Council member disclose her reason for recusal, although it was not a requirement under the ordinance.

However, if you are only a member of the Association, then you are not prohibited from voting on matters involving the association. See RQO 98-04 where a Community Council member was permitted to vote on a zoning matter involving his synagogue of which he was a member, but not an officer or director.

3. You are not prohibited from remaining an active member of Crime Watch. Again, as noted in question 2, if the organization appears before the Council and you are an officer/director of the group, you would be prohibited from participating in and voting on matters involving Crime Watch.

4. Regarding your friendship with a fellow Council member, please understand that the Sunshine Law prohibits 2 or more members of the same board from discussing, outside a duly noticed public meeting, any matter which is presently before the Council or may foreseeably come before the board for action. Penalties for noncompliance include removal from office, fines for noncriminal infractions and criminal penalties where there is a knowing violation.

5. Your service on the Community Council does not preclude your participation in anti-incorporation issues. However, if there is an organized anti-incorporation group in which you are involved, you may not appear before your Council on behalf of that group with respect to any ruling, decision, opinion, etc... Section 2-11.1 (m), "*Appearances and payment prohibited.*" Appearance is broadly defined to mean that one cannot submit documents or correspondence, appear in meetings with staff or appear before any board or agency on behalf of a client, organization, [non] profit. This section further provides that autonomous personnel may not receive compensation, directly or indirectly or in any form, for services rendered to a third party who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party. Nothing in the Code precludes you from making presentations on your own behalf.

6. There is no legal conflict for you to serve on the BOD of American Nicaraguan Foundation and to fundraise/promote the foundation. However, you may not use your official position and other "trappings" of your public office to solicit funds or contributions on behalf of the foundation. Section 2-11.1 (g) prohibits elected and appointed officials from using or attempting to use their official position to secure special privileges and exemptions for themselves or others.

7. You may participate in fundraisers and make political contributions.

8. Again, you and your husband may contribute to campaigns, host fundraisers and support local candidates. See question 6 regarding your use of official position. Your husband's position as Chair of the Miami Business Group does not, on its face, present any apparent conflicts with your position on the Council.

Should you have any further questions or concerns, please do not hesitate to contact our office.

Sincerely Yours,

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

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

From: jhernandeztorano@bellsouth.net [mailto:jhernandeztorano@bellsouth.net]

3/1/05

Sent: Thursday, February 17, 2005 4:41 PM
To: cprkic@miamidade.gov
Subject: Ethics Commission Opinion Letter

Dear Ms. Prkic:

I was recently appointed to Community Council District 12 by Commissioner Gimenez. There are a few issues relating to my background and activities that I need to make sure are known to and reviewed by your office so that I can properly address any questions that may be raised in connection with my position as a member of the Community Council. I would appreciate your written opinion with respect to the following issues and how they may impact on me as a member of the Community Council :

1. My husband is a partner in the corporate and securities group of Holland & Knight. His practice is predominantly general corporate and entertainment. Recently, a very active group of land use lawyers joined Holland & Knight. I have no access to any files and/or clients handled by Holland & Knight.
2. I am an active member of my Neighborhood Homeowner's Association - Sunkist Estates Homeowner's Association.
3. I am an active member of my Neighborhood Crime Watch.
4. I am a personal friend of Ms. Carla Savola, who is also a member of Community Council 12.
5. I am active in anti-incorporation issues.
6. I am on the board of directors of the American Nicaraguan Foundation (ANF), a charitable organization which assists the poor in Nicaragua. At times, I am involved in fundraising events, such as the annual gala, radio programming to promote the works of ANF and to promote fundraising.
7. Can I make political contributions? Can I participate in political fundraisers?
8. My husband participates actively, as a contributor and sponsor/host, in the area of political fundraising, particularly for local candidates. He is also identified, from time to time, with local political issues and causes in his individual/personal capacity and as the Chair of the Miami Business Forum (formerly known as the NonGroup). Both my husband's and my names appear on our checking account.

Thank you so much for your assistance in clearing up these matters.

Sincerely,

Jackie Hernandez-Toraño