

Memo

To: Barbara Gomez-Rodriguez
Affordable Housing Advisory Board

From: Ardyth Walker
Staff General Counsel

Date: 5/5/2006

Re: INQUIRY 06-63 -Affordable Housing Advisory Board

I received your request for a legal opinion regarding whether board members can serve if they represent entities that receive funding from the Affordable Housing Advisory Board. You also requested guidance regarding whether the Conflict of Interest and Code of Ethics ordinance creates procedures for abstaining from votes due to a conflict of interest. I am rendering this opinion based on the information contained in your request. The Ethics Commission has not considered this matter. Please contact me if you want this matter placed on the Ethics Commission's May agenda.

As you may be aware, Section 17-106 of the Code of Miami-Dade County governs the composition of the Affordable Housing Advisory Board. The enabling ordinance requires the board to include members of certain groups including for-profit and non-profit developers of affordable housing, real estate professionals, developers, banking or mortgage professionals and planning agency personnel. The Board of County Commissioners may also appoint attorneys, architects, engineers and members of the construction industry. The enabling ordinance mirrors the requirements of Section 420.9076, F.S. (2005) which requires counties to establish affordable housing advisory boards to make funding recommendations regarding distribution of housing funds.

Section 17-106 prohibits members from serving on the Affordable Housing Advisory Board if the member has a financial interest in any entity that applies for or receives funding from Miami-Dade County through the Affordable Housing Board.

Generally, a financial interest in an entity is considered stock ownership in the company. A person is not considered to have a financial interest in an entity if the person is an employee of an entity that may receive funding as a result of AHAB's recommendations.

The Ethics Commission has previously opined that members of a county board may serve, pursuant to the entity's enabling legislation, even if they work for an entity that may receive funding as a result of the board's recommendation. In RQO 01-129, the Ethics Commission opined that service providers and other entities who received funding from the Miami-Dade HIV/AIDS Partnership were permitted to serve as board members.

Similarly, AHAB members, who are employees of entities that may receive funding, may serve as board members.

As for potential voting conflicts, members are not permitted to vote on funding recommendations that will directly benefit their employer. Section 2-11.1(v) provides that no member of a quasi-judicial or advisory board "shall vote on any matter presented to an advisory board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor and creditor."

Section 2-11.1(v) does not prohibit board members from participating in discussion regarding funding recommendations that may benefit their employer or an entity with which they are associated. Section 2-11.1(v) only prohibits board members from voting on funding recommendations.

Section 112. 3143, F.S. (2005) is also applicable to members of the Affordable Housing Advisory Board. The state voting conflict section similarly prohibits advisory board members from voting on any matter that will inure to the special private gain or loss of the board member or to any principal by which the member is retained or any parent organization of a corporation by which the board member is retained or the gain or loss of any business associate or relative of the board member.

Therefore, persons may serve as members of the Affordable Housing Advisory Board if they are employed by or have business relationships with entities that may receive funding as a result of the board's recommendations. However, the board member may not vote on funding recommendations that will directly benefit their employer or any entity with which they have any of the relationships enumerated above.

Please contact me at (305) 350-0616 if you have any additional questions.