

INQ 02-27

Prkic, Christina (COE)

From: Susan L. Trevarthen [STrevarthen@wsh-flalaw.com]
Sent: Monday, June 17, 2002 12:35 PM
To: 'cprkic@miamidade.gov'
Cc: Joseph H. Serota; Nancy E. Stroud; David M. Wolpin
Subject: Question re recusal in quasi-judicial hearing

Christina,

Thanks for talking with me and offering to help. As we discussed, my question is whether a City Council member who has signed a petition against the grant of a quasi-judicial land use approval (in this case, a special use permit) is required or permitted to recuse himself from participating in the Q-J hearing this evening.

My first reaction is this is not a statutory conflict so he cannot recuse himself, but it raises real concerns for me about whether the Q-J hearing will be vulnerable to attack for lack of an unbiased decisionmaker, particularly the vote is close or if he participates extensively in the debate. We think we have seen a recent case, perhaps Fourth District, that held that there is no statutory conflict permitting recusal in such a situation - we are trying to find it. Thanks again.

Susan L. Trevarthen
Weiss Serota Helfman Pastoriza & Guedes, P.A.
3107 Stirling Road, Suite 300
Fort Lauderdale, FL 33312
954-763-4242 phone
954-764-7770 fax
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Prkic, Christina (COE)

From: Susan L. Trevarthen [STrevarthen@wsh-flalaw.com]
Sent: Monday, June 17, 2002 2:24 PM
To: 'Prkic, Christina (COE)'
Cc: Joseph H. Serota; Nancy E. Stroud; David M. Wolpin
Subject: RE: Question re recusal in quasi-judicial hearing

Thanks for your prompt assistance with this inquiry, Christina.

Susan

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

From: Prkic, Christina (COE) [mailto:cprkic@miamidade.gov]
Sent: Monday, June 17, 2002 2:22 PM
To: 'Susan L. Trevarthen'
Subject: RE: Question re recusal in quasi-judicial hearing

Hi Susan,

After reviewing the facts as stated only in this inquiry, and absent any other additional information, we find that there is no voting conflict for the below-mentioned city official.

Miami-Dade County Code of Ethics Section 2-11 (d) states that "no person defined in (b) (1) shall vote...in any matter...that would affect the person... in a manner distinct from the manner in which it would affect the public generally." Additionally, any person included the term defined in (b) (1) "who would or might, profit directly or indirectly, profit or be enhanced by the action...shall absent himself or herself from the commission meeting...and shall not vote on or participate in any way..."

The Ethics Commission in RQO 01-61 opined that the requester, an elected official, could participate in discussion and vote on a zoning change for a local private school where the official's children attend because the official did not have any of the prohibited relationships with the school as enumerated in Sec. 2-11.1 (d) and the official would not uniquely be affected by any action taken by the Board.

Please be advised that this is an informal staff recommendation as reviewed by the undersigned and our Executive Director, Robert Meyers, and not an official Ethics Commission opinion.

If you have any additional questions or comments please do not hesitate to contact me directly at (305) 350-0615.

Best regards,
Christina Prkic

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