



Via First Class Mail
and
email at jseiden@olsrhh.com

ETHICS COMMISSIONERS

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October 31, 2011

Jan Seiden, Esq.
Orshan, Lithman, Seiden et al.
150 Alhambra Circle, Suite 1150
Coral Gables, FL 33134

RE: RQO 11-27
Voting Conflicts for Elected Officials
County Code at Sec. 2-11.1 (d)

Dear Mr. Seiden:

You asked if Miami Springs City Council Members would have voting conflicts based solely on their prohibited relationships with an entity or entities before them.

In public session on October 25, 2011, the Ethics Commission found that elected officials in the City of Miami Springs would have conflicts if they voted on matters brought to them by entities on which they also served as directors. This opinion is based on the plain meaning of the Ethics Code at Sec. 2-11.1 (d)¹ and numerous opinions of the Ethics Commission.²

The Commissioners recognized the City's interest in maintaining ownership of the historic Curtiss Mansion and, at the same time, obtaining tax credits associated with renovation of the Mansion. The IRS allows for rehabilitation tax credits under the Historic Preservation Tax Incentives Program, but the IRS does not allow a governmental or nonprofit entity to claim the rehabilitation tax credit.³

¹ Under Sec. 2-11.1 (d) of the County Code, a city council member may not vote on any matter if he/she may benefit from the vote or if he/she has one of the enumerated relationships with the entity before him/her.

² See RQO 04-04 to Co. Commissioner Dorrin Rolle; RQO 04-89 to Palmetto Bay Village Attorney Eve Boutsis on behalf of Council Member John Breder; and RQO 10-20 to Key Biscayne Council Member Michael Kelly.

³ Money used to renovate the Curtiss Mansion was obtained primarily from two sources, i.e., (1) grants of approximately two million dollars from Miami-Dade County, funded by government bond revenues that qualified for tax exemptions and (2) donations of approximately one million dollars obtained from Curtiss Mansion, Inc., a nonprofit organization that also qualified for tax exemptions.

The City of Miami Springs plans to create a series of entities, at least one of which will be a for-profit entity that will manage the Curtiss Mansion and place the property "in service," as per an IRS requirement. This for-profit entity will then qualify for the tax credit.

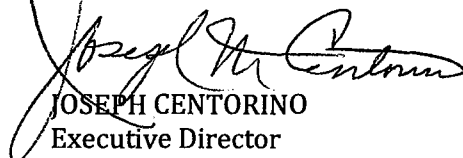
In the scenario you presented, all elected officials of the City of Miami Springs would be precluded from voting on any matters related to the Curtiss Mansion if they also served as officers of the Board of Directors of one or more of the entities bringing Mansion issues before them. Under the County Code, a prohibited relationship creates a *per se* voting conflict independent of whether any personal benefit inured to the elected official.⁴

The Ethics Commissioners suggested that to overcome the voting prohibition, the City of Miami Springs may wish to seek relief from the Board of County Commissioners with an amendment to the Ethics Code or to allow city staff, not elected officials, to sit as the board of directors of the entities it proposes to form.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state or federal law. The City may wish to seek further guidance from the State of Florida Ethics Commission and/or the State Attorney General.

Please feel free to contact me or Victoria Frigo, Staff Attorney, if we can be of further assistance.

Sincerely,



JOSEPH CENTORINO
Executive Director

⁴ The County Ordinance is sometimes misread as similar to State law. An indispensable element of a voting conflict under State law is that a *special private gain or loss inures* to the official, to the principal that employs the official, or to relatives or business associates of the official. Fla. Stat. 112.3143 (2011). Under the County Code, a finding of profit or enhancement is not required if a prohibited relationship exists.