

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, January 17, 2018 12:21 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-01 Kimberly Brown, Supervisor, Planning Division, Regulatory and Economic Resources Department (RER), Miami-Dade County (Voting Conflicts, Sec. 2-11.1(v); Actions Prohibited When Financial Interests Involved, Sec. 2-11.1(n))
Attachments: Creation of the Mayor's Urban Expansion Area Task Force.pdf

INQ 18-01 Brown

From: Centorino, Joseph (COE)
Sent: Tuesday, January 16, 2018 5:23 PM
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Cc: Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Kerbel, Dennis A. (CAO) <Dennis.Kerbel@miamidade.gov>
Subject: INQ 18-01 Kimberly Brown, Supervisor, Planning Division, Regulatory and Economic Resources Department (RER), Miami-Dade County (Voting Conflicts, Sec. 2-11.1(v); Actions Prohibited When Financial Interests Involved, Sec. 2-11.1(n))

Ms. Brown,

This is in response to an inquiry from Miami-Dade Department of Regulatory and Economic Resources concerning the conflict of interest provisions under the Miami-Dade Conflict of Interest and Code of Ethics Ordinance that may apply to members of the Mayor's Urban Expansion Area Task Force (Task Force) who may own property or have business interests within one of the areas that are being examined by the Task Force and who may be expressing opinions or voting on issues regarding those issues. You serve as the staff coordinator for the Task Force. The Task Force until this point has been meeting in accordance with the Florida Sunshine Law for informational and discussion purposes, but has not yet taken any formal votes making recommendations

The Task Force was created by the Mayor of Miami-Dade County on May 16, 2017 with the purpose of providing recommendations for consideration by the Planning Advisory Board (PAB) and the Board of County Commissioners (BCC) on the following topics:

- Changes to the current boundaries of the Urban Expansion Areas;
- Creation of new Urban Expansion Areas; and
- Changes to the criteria that should be considered for applications requesting expansion of the Urban Development Boundary (UDB).

Recognizing the importance, sensitivity and public interest in the issues pertaining to the changes in UEA's and the UDB, it is explicitly stated in the Mayor's Memorandum creating the Task Force, that the Task Force is to include "the input of all interested parties." To this end, there are representatives on the Task Force from various organizations, including environmental, business, and industry groups, as well as property owners and Community Council members. There is no pending proposal for immediate changes to the UEA's or to the UDB or any specific development proposals underway that would or could be affected by whatever recommendations come out of the Task Force, and it is understood that there are significant further steps that would have to be taken and processes followed by County decision-makers before any such changes or proposals could be acted upon. The Mayor's Memorandum describes the Task Force as engaged in a "visioning effort" to insure that future decisions concerning these matters will be made in concert with the

County's goals in balancing environmental preservation, resiliency, transportation/land use planning, and economic development.

The Task Force has no formal decision-making power, but may make recommendations in these areas for possible future consideration by the authorities empowered to make decisions concerning these issues. The Task Force, which has been operating in compliance with the Florida Sunshine Law as a governmental advisory body, has had several meetings for informational and discussion purposes, but has not yet taken any formal votes making policy recommendations on the issues within its purview. The work of the Task Force, per the Mayor's Memorandum, was anticipated to be completed and sunset within seven months, and will not exceed one year.

Certain provisions of the County Ethics Code, Section 2-11.1, including voting conflicts of interest (2-11.1(v)) and Actions Prohibited When Financial Interests Involved (Section 2-11.1(n)) are made applicable to County advisory personnel. The issue of the applicability of the Ethics Code to the Task Force is an important one due to the fact that, in the event that there are votes or other official action taken by the Task Force, the presence on the Task Force of some stakeholders, e.g., property or business owners or representatives, in the geographical areas that could be the subject of those votes could affect the eligibility of such individuals to participate or vote on those items. Section 2-11.1(v) of the Ethics Code would create a voting conflict of interest for members of advisory boards who are directly affected by a vote and who have one of a number of enumerated relationships with persons or entities appearing before the board. Section 2-11.1(n) of the Code would prohibit a member of an advisory board from participating "in any official action, directly or indirectly affecting a business in which he [or she] or any member of his [or her] immediate family has a financial interest."

Subsection 2-11.1(b)(4) of the Ethics Code defines "advisory personnel" as, "members of those County advisory boards and agencies whose sole or primary responsibility is the recommend legislation or give advice to the Board of County Commissioners. However, when determining what constitutes a County advisory board, the Ethics Commission has in prior opinions has utilized the definition of a County board which appears in Section 2-11.36.1, a Miami-Dade Code provision outside of the Ethics Code. In defining the term "board" for the purpose of determining whether a particular group is a County board under Section 2-11.36.1 of the Code, it is stated that this provision "shall not apply to citizen groups created for specific advisory purposes where such group's existence is limited to a period of less than one (1) year," which is the same limitation applied to the Task Force. Another provision that appears in the same section of the Code as the latter section, states that, "The provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall be applicable to county boards." See Section 2-11.39.2. It may be inferred from this provision that boards which do not meet the County Code definition of a County "board" may not be subject to the Ethics Code.

No official opinion (RQO) issued by the COE has been located which explicitly states that an advisory body not in existence for one year is not subject to the Ethics Code pursuant to Section 2-11.36.1. However, there is an RQO analyzing financial disclosure requirements under the Ethics Code which does include among the boards not required to file financial disclosure, "Task Forces or Ad Hoc Committees whose enabling resolution provide(sic) for a duration of less than one calendar year." See RQO 09-42. No reference is made in this RQO to Section 2-11.36.1, though it would be reasonable to assume that the provision was considered in connection with its conclusion. Members of boards or committees that are in existence for less than one year have been exempted from the financial disclosure requirement, pursuant to Section 2-11.36.1, in past informal opinions. See, e.g., INQ 14-24. The issue of the applicability of the Ethics Code to such entities has usually been raised in connection with the financial disclosure requirements imposed on members of County advisory boards.

There is an informal opinion, however, provided to the Town of Surfside concerning the hiring of a member of a local board as a city contractor, which does state that the Ethics Code does not extend to members of ad hoc committees in existence for less than one year. See INQ 11-63. The import of this opinion, together with RQO 09-42, has led me to the conclusion that the Task Force is probably not covered by the provisions of the Ethics Code, including Sections 2-11.1(v) (Voting Conflicts) and Section 2-11.1(n) (Actions Prohibited When Financial Interests Involved).

Local government advisory boards are covered by the State Code of Ethics in Chapter 112, Florida Statutes. While the County Ethics Commission does not have the authority to interpret or enforce the provisions of the State Ethics Code, we are generally familiar with them and do include mention of some of these provisions in our opinions, particularly in situations where the County Ethics Code may not apply. It does not appear that there is an exemption in the State Code for boards that are in existence for less than one year. Therefore, it is likely that Section 112.3143, regarding voting conflicts of interest, would apply to the members of the Task Force. If the Task Force conducts votes of its members for the purpose of providing the collective recommendation of the board, then this provision could prevent certain members of the board from participating in the vote, in the event that such members have conflicts of interest due to their having personal financial stakes in the recommendation of the board. To avoid such conflicts, it would be advisable that, prior to such votes, an opinion be obtained from the State of Florida Commission on Ethics regarding the particular circumstances involved. Conflict of interest provisions other than the voting conflict provisions in Section 112.3143 may also apply to members of the Task Force.

I realize that, given the limited time that the Task Force has to complete its mission, the process of submitting and obtaining legal opinions regarding possible conflicts of interest from the State Ethics Commission could prevent it from fulfilling its mission. As an alternative, the Task Force staff may consider avoiding the taking of any official vote representing the will of that body. If the purpose of the Task Force, as conceived by the Mayor, is to permit the County to receive input from various individuals having some stake or interest in the County's upcoming decisions regarding the UEA and UDB, then this could be accomplished by permitting each member to provide his or her opinions apart from any official vote. These comments could be recorded and compiled as a representation of the input of the individual members of the board, without being considered as a formal recommendation from the board membership as a whole. This is done routinely by government in other formats, such as public hearings or charrettes. It would be expected, of course, that procedural or organizational votes of the Task Force, not representing any policy recommendation, could still be conducted, as long as such votes did not inure to the special private interests of any member.

I hope this is helpful to the Task Force and County staff in deciding how to proceed.

Sincerely,

Joe Centorino

Joseph M. Centorino

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From: Brown, Kimberly (RER)
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Subject: meeting

Mr. Centorino,

I am the staff coordinator for the County's Urban Expansion Area Task Force. I spoke yesterday with Mimi Diaz-Greco regarding Ethics Code considerations for task force members. She indicated that you would probably want to weigh in personally on any inquiries related to the task force. Are you available in the coming weeks to meet with myself, our Assistant Director and Deputy Director to discuss these issues? For your reference, I've attached the Mayor's memo that created the task force which provides an overview of its purpose and structure.

Your assistance would be greatly appreciated.

Thanks,
Kim

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