

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, September 07, 2018 4:32 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-199 Imran Ali, Chief of Staff, Miami-Dade County Children's Trust (Voting Conflicts)

INQ 18-199 Ali

From: Imran Ali [mailto:imran@thechildrenstrust.org]
Sent: Monday, August 20, 2018 3:50 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Graves, Shanika (CAO) <Shanika.Graves@miamidade.gov>; Kobrinski, Leigh (CAO) <Leigh@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>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>
Subject: Re: INQ 18-199 Imran Ali, Chief of Staff, Miami-Dade County Children's Trust (Voting Conflicts)

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Thank you Joe. I appreciate the timely response.

Imran Ali
Chief Of Staff

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On Aug 20, 2018, at 3:46 PM, Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov> wrote:

Mr. Ali,

This is in response to your request for opinion in connection with a proposed change to the provisions of the Children's Trust By-laws regarding Conflict of Interest. The proposed change would amend Article VI (1) of the By-laws. There are several stylistic or procedural changes, but the major substantive change appears to relieve a board member from the restriction against speaking on an issue in which the member has declared a conflict of interest under that Article. The existing section prohibits a board member who is an employee or member of the governing authority of an agency that would be affected by a funding issue before the board from speaking or voting on the issue. If the amendment is adopted, henceforth a member of the Trust Board with a recognized conflict of interest by virtue of such involvement would still be prohibited from voting, but would be able to participate in the discussion of the issue, and, in effect, to influence the decision of the board on a matter involving his or her own agency.

As a non-County board, the Children's Trust is not automatically covered by the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1, of the County Code. It is subject to the provisions of its By-laws as well as to the Children's Trust Board Conflict of Interest and Code of Ethics Policy ("Ethics Policy") it has adopted, as well as to the State Ethics Code, Chapter, 112, Florida Statutes. The Miami-Dade County Commission on Ethics and Public Trust is empowered, pursuant to Section III.E. of its Ethics Policy "to review, interpret, render advisory opinions and letters of instruction and enforce" the Ethics Policy.

Section III.D. of the board's Ethics Policy provides that, "At all times, board members and staff will act in such a manner as to avoid the appearance of impropriety." This standard, which is possibly the highest standard of ethics that is applied to a governmental body, creates more than a "legal" standard that can be clearly defined. It requires that members of the board be attentive at all times, not just to legal conflicts of interest, but to the appearances created by its members' actions when those actions detract from the perception of the board's ethics, objectivity or fairness. If a board member is involved in an action that would cause a reasonable person to doubt the fairness or objectivity of a board decision, then that activity may well violate the "appearance of propriety" provision.

My concern is that permitting a board member to directly participate in the discussion on a funding issue affecting an agency of which the board member is a director, officer or employee could easily lead to a perception of unfairness on the part of some observers, particularly those who may be connected to agencies that may be disappointed in not receiving the same or similar funding from the Children's Trust. It is difficult to conceive that a board member with such a relationship with an interested agency would be in a position to act in any way other than a spokesperson for his her agency's interests. Moreover, the participation of such a board member in a discussion of a funding issue could result in a perception of undue influence on a board decision where other interested agencies without such representation would feel slighted.

I understand that the purpose of the proposed change may be to make available to the board the insight and expertise of a board member regarding his or her agency's activities or capabilities. However, this consideration may be satisfied by inviting another representative of the agency in question with the necessary expertise to address the board. It also would eliminate the perception that there exists an unlevel playing field among agencies competing for funding where one or more of those agencies happen to have an employee, officer or director sitting as a Children's Trust board member.

Based on this analysis, it is my recommendation that the board not adopt the amendment in question.

A secondary question posed by you has to do with regard to the recusal of a board member on a resolution where the board member may be affiliated with one of a number of agencies affected by the

resolution. You inquired concerning whether there could be a separation of the board member's agency from the resolution, such that the board member in question could vote on the main resolution and abstain from voting on the item affecting his or her agency. I do not see a problem if the votes are structured in such a way that no member is voting on an item that affects his or her agency. If there is a separation of the member's agency from the item in question and no impact on the member's agency under the wording of a resolution referencing only other agencies, then it seems to me that the abstention issue is satisfied. I would caution that the items be separated completely so that the member is not voting on funding directed by the wording of the resolution to his or her own agency.

Sincerely,

Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
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From: Imran Ali [<mailto:imran@thechildrenstrust.org>]
Sent: Thursday, August 16, 2018 7:40 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Graves, Shanika (CAO) <Shanika.Graves@miamidade.gov>; Kobrinski, Leigh (CAO) <Leigh@miamidade.gov>
Subject: Request for an opinion

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reportspam@miamidade.gov **Enterprise Security Office**

Hi Joe: Heard that you are about to retire! Please have a great retirement and enjoy the time away from work. Below is a request for your opinion on as issue we are looking at as we update our bylaws. Hope that you send send us thoughts. Might be your last opinion for us.

The Bylaws Committee of Board of Directors of The Children's Trust has been considering changes to the Bylaws of the organization. In this regard, I would like your opinion regarding one of the proposed changes that deals with conflicts of interest.

Specifically, the Bylaws Committee is proposing to change Article IV (Conflicts of Interest), Section 1 to read as follows (change in question is highlighted in yellow):

1. ~~Members of the Board~~ A Board member will, prior to voting on a funding issue that involves any program or agency in which ~~they~~ he or she participates as an employee or member of the governing authority, shall disclose their interest in said program or agency and file a disclosure statement with the ~~secretary~~ Clerk of the Board. If a member of the Board has declared a conflict of interest the member shall abstain from speaking or voting on such issue, however, the member does not need to leave the room during discussion or voting on the issue.

At the Bylaws Committee meeting at which this provision was discussed, several members felt that the change should be made, among other reasons, to permit a member who recuses himself/herself to answer questions concerning the subject resolution. Persons attending the meeting would have notice of the conflict of interest, and although the change would permit a Board member who has recused himself/herself to speak during the discussion concerning the relevant resolution, that member would still be prohibited from voting on the issue.

Can you please let me know at your earliest convenience whether, in your opinion, the changes are permissible under applicable laws and regulations?

Thanks
Imran

Imran Ali

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<image002.jpg>
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