

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, November 06, 2018 3:23 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-241; Paul Schwiep, Member, Citizen's Independent Transportation Committee (Prohibited Appearances 2-11.1(m)) INQ 18-241
Attachments: Schwiep INQ Appearance Prohibited.docx

18-241 Schwiep

From: Perez, Martha D. (COE)
Sent: Tuesday, November 06, 2018 3:10 PM
To: pschwiep@coffeyburlington.com
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Libhaber, Bruce (CAO) <Bruce.Libhaber@miamidade.gov>; Alfonso, Annery (CAO) <Annery.Alfonso@miamidade.gov>
Subject: Paul Schwiep, Member, CITT, Appearances Prohibited, 2-11.1(m); INQ 18-241

Dear Mr. Schwiep,

Attached please find our response to your inquiry. Any questions, do not hesitate to contact us.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

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MEMORANDUM

TO: Paul Schwiep, Esq.
Board Member, Citizens' Independent Transportation Committee (CITT)

FROM: José Arrojo, Executive Director
Martha D. Perez, Staff Attorney

SUBJECT: INQ 18- 241, [Appearances Prohibited §2-11.1(m)(2)]

DATE: November 6, 2018

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your representation of a third party in an administrative hearing.

Question Presented: Whether you, while sitting as a member of the Citizens' Independent Transportation Committee (CITT), may represent a party in an administrative hearing before the State of Florida Division of Administrative Hearings challenging the County's amendment to the Comprehensive Development Master Plan (CDMP) overseen by the Miami-Dade County Expressway Authority (MDX).

Facts: You have filed a Petition for a formal Administrative Hearing on behalf of Tropical Audubon Society and Michelle Garcia (Petitioners) to contest the County's adoption of Ordinance No. 18-109, approving an amendment to the County's Comprehensive Development Master Plan authorizing the construction of a 14-mile, 6-lane toll road outside the County's urban development boundary (SR 836 SW extension).¹ The County

¹ On or about September 27, 2018, the Board of County Commissioners (BCC) passed Ordinance 18-109 adopting Application No. 8 to the CDMP by amending the Land Use Element to include the SR 836 SW extension as an expressway on the Land Use Plan map; and, amending the Transportation element map series in the Traffic Circulation Sub-element and Mass Transit Sub-element to include the SR 836 SW extension.

entered into an Interlocal Agreement with the Miami-Dade Expressway Authority (MDX) to address and implement the requirements for the SR 836 SW extension project.²

You are a member of the Citizens' Independent Transportation Committee (CITT), a semi-autonomous board in Miami-Dade County responsible for the management of the ½% County Transit System Surtax levied by the County. Specifically, CITT oversees all the transportation and *transit* projects listed in any levy of the surtax, and all other projects funded with surtax proceeds, including the Five-Year Implementation Plan which is approved by the BCC upon the recommendation of the Mayor and CITT. (Section 29-124, Miami-Dade County Code)

You assert that no transit surtax funds under CITT's jurisdiction will be devoted to the SR 836 SW extension project.³ Additionally, as you point out, "[t]he SR 836 extension is not part of CITT's five-year implementation plan. The SR 836 extension is an independent project of MDX to be entirely funded through MDX toll revenues in all aspects including as to *transit* and trails."⁴

Discussion: The Ethics Commission has jurisdiction over CITT. (Section 2-1421 (i), Miami-Dade County Code)

Section 2-11.1(m)(2) of the County Ethics Code prohibits quasi-judicial, autonomous and advisory personnel from appearing before the County board or agency on which the member serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any "license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person." The prohibition extends to appearances in court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves through the suit in question.

This prohibition covers any litigation which may involve CITT *in any way*. (RQO 01-102; INQ 17-271). The administrative petition and any subsequent legal relief sought by the Petitioners in this matter is not connected or affiliated with CITT's duties and responsibilities or funding initiatives. Rather, the SR 836 Extension project is strictly the undertaking of the County (through the Department of Regulatory and Economic Resources) and MDX by and through their Interlocal Agreement for Implementation of Mitigation Measures and other Policy Requirements for the MDX SR 836 Southwest Extension Facility. In the event the administrative petition results in a recommendation to

² MDX operates and maintains SR 836. Any proposed extension would be built and operated as a tolled facility by MDX; and, all design and construction would be funded solely by MDX. Specifically, MDX shall fund express bus service (transit) along the proposed SR 836 extension.

³ Note that, the Summary of the County's Implementation for People's Transportation Plan (PTP) for fiscal years 2018-2023 reveals a pending project funded wholly or in part by surtax funds administered by CITT involving the SR 836 Corridor/Express Bus Service. At this time, any possibility that MDX will assume the costs associated with the SR 836 Corridor project is speculative. For purposes of this opinion, the SR 836 SW extension project is separate and distinct from the SR 836 Corridor/Express Bus Service PTP project.

⁴ Email to Jose Arrojo on 11/5/2018.

approve the CDMP amendment, the funding for the project would be solely administered by MDX.

Opinion: You may engage in the representation of a third party in the administrative hearing against the County because the relief you are seeking on behalf of the third parties involves actions which are not associated with CITT functions and which do not involve any recommendations, funding or otherwise, undertaken by CITT.

Notwithstanding, pursuant to Section 2-11.38 of the Code of Miami-Dade County (Membership on boards), “no person sitting on a County board may file a lawsuit against the County that challenges a policy set by the Board of County Commissioners without relinquishing his or her seat on the County board unless the Board of County Commissioners by two-thirds (2/3) vote of its membership waives this requirement.” The Ethics Commission does not have jurisdiction to interpret this section of the County Code. You may wish to consult with the County Attorney regarding the applicability of this section to the facts concerning your legal representation in the pending administrative hearing while serving on a County board.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

