



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: James R. Haj, President and Chief Executive Officer
Imran Ali, Chief of Staff
The Children's Trust

FROM: Jose J. Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 18- 249, Possible Government in the Sunshine law Violation, Section 286.011, Florida Statutes

DATE: November 19, 2018

CC: Shanika A. Graves, Esq.
Assistant County Attorney

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust regarding a possible Government in the Sunshine law violation.

Facts: You advise that there may have been non-public meeting communications between members of the Children's Trust Board. Some Board members may have, verbally and by electronic mail, discussed changes to the Trust's Bylaws relating to budget amendments. A series of electronic mail messages between members of the Trust Board and staff support this assessment.

Issue: You inquired whether the communications and their subject matter, changing the bylaws relating to budget amendments, should be addressed as an agenda item in a subsequent public sunshine meeting.

Discussion: The Miami-Dade Commission on Ethics and Public Trust neither interprets nor enforces state statutes and we have no jurisdiction to provide you with a formal opinion regarding this matter. The Attorney General of Florida provides advisory opinions regarding the Government in the Sunshine law. Of course, you may also consult with County Attorney's Office regarding these matters.

While we do not provide formal opinions regarding the Government in the Sunshine law, we are charged by ordinance with providing training on the Sunshine law to certain categories of persons that transact with the County, including members of the Children's Trust Board. Because of this, we have some familiarity with the law.

As you know, the Government in the Sunshine law found at Fla. Stat. §286.011, limits communications between members of Children's Trust Board if the subject matter of the communication consists of Trust matters that will be addressed by Board in a public sunshine meeting. Staff member liaison communication scenarios are also prohibited by the statute. Therefore, a staff member may not engage outside the sunshine with a board member on board business and thereafter restate a portion of that communication with another board member, thereby serving as a liaison for prohibited communications.

If there is board action taken outside of the sunshine in violation of the statute, then it may be that the same is void ab initio, or a nullity. Independent action taken at a subsequent public meeting is the only means to cure the defect taken outside of the sunshine.

Opinion: Again, with caveat that we are not charged with interpreting or enforcing state statutes, it appears that a violation of the Sunshine Law may have occurred, and the best practice would be to address the same, and in abundance of caution, also best to address the subject matter of the communication in a public sunshine meeting even if no final action or decision came of the communications.

This request for comment by the Commission on Ethics has been discussed with the County Attorney's Office and referred to those agencies with enforcement authority for the Government in the Sunshine law. No investigation regarding this matter has taken place by the Commission.

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.

Wednesday, October 24, 2018 at 10:42:16 AM Eastern Daylight Time

Subject: Fw: ByLaws: Amendment Language
Date: Wednesday, October 24, 2018 at 9:44:08 AM Eastern Daylight Time
From: William Kirtland, CPA
To: Imran Ali

*Hoffman
&
Steve Hope*

Here is the email thread that included communication with Ken Hoffman.

Allow me to also summarize my telephone conversation with Steve Hope on Sunday 10/21. I had initially sent Steve a text message stating:

"I wanted to mention that the board meeting tomorrow includes some changes to the bylaws. Most notably (from my perspective) an edit that allows the CEO the ability to approve budget amendments as long as the total allocations within management expenses and providers services remain the same. This would allow us to move amounts between initiatives if opportunities become available during the year. This would also allow us to proactively address the fund balance issue without delay. Let me know if you would like to discuss this before the meeting."

Following the message we had a conversation discussing the importance of an additional provision that either required reporting back to the finance committee of any changes or % changes to the originally proposed budget. Steve supported the language as long as we considered this additional requirement.

Let me know if you need anything else.

William Kirtland, CPA
Chief Financial Officer
Tel: (305) 571-5700 Ext: 334 Fax:
(305) 854-0289
william.kirtland@thechildrenstrust.org

*Are
Hoffman
&
Hope
members?*



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Page of

such laws and thus subject to disclosure.

From: William Kirtland, CPA
Sent: Tuesday, October 16, 2018 10:10 AM
To: Wendy Duncombe, CPA
Subject: Re: ByLaws: Amendment Language

Ok thanks Wendy. Unless there is a strong disagreement I think we will proceed with Ken's language.
William Kirtland, CPA

Chief Financial Officer
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william.kirtland@thechildrenstrust.org



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From: Wendy Duncombe, CPA
Sent: Tuesday, October 16, 2018 10:03:51AM
To: William Kirtland, CPA
Cc: Wendy Duncombe, CPA
Subject: Re: ByLaws: Amendment Language

Bill, I don't have any thing new. I was only thinking that if a budget amendment has to go to the committee that the committee can approve the amendment without going to the Board, unless required by Florida statute... But that may be more complicated. Thanks

Page 2 of 6

Wendy Duncombe, CPA

Controller

-re': (305) 571-5700 Ext: 320 Fax: (305)

854-0289

wendy.duncombe@thechildrenstrust.org

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From: William Kirtland, CPA

Sent: Tuesday, October 16, 2018 12:56:38PM

To: Wendy Duncombe, CPA

Subject: Re: ByLaws: Amendment Language

Would you mind adding back in the language you thought was essential? Imran says I need to send to him today.

On Oct 15, 2018 12:22 PM, "Wendy Duncombe, CPA" <wendy@thechildrenstrust.org> wrote:

Bill there is a slight difference in that while we can increase the amount budgeted for a direct service, while still aligning with the strategic plan, we cannot move \$ from direct service to management and general and non-operating expenditures without bringing it to the committee/ board. At least that is what I hope it conveys. Maybe there is room for further tweaks..

Thanks

Wendy Duncombe, CPA

Controller

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wendy.duncombe@thechildrenstrust.org

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From: William Kirtland, CPA
Sent: Monday, October 15, 2018 10:58 PM
To: Wendy Duncombe, CPA
Subject: Fw: ByLaws: Amendment Language

Wendy, what do you think of the slight edit Ken made to the bylaw we are proposing?

William Kirtland, CPA

Chief Financial Officer

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william.kirtland@thechildrenstrust.org<<mailto:william.kirtland@thechildrenstrust.org>>

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From: Ken H <kaceyhof@gmail.com>
Sent: Friday, October 12, 2018 4:55 PM
To: William Kirtland, CPA
Subject: Re: ByLaws: Amendment Language

Bill, see below suggested edit:

f) At any time during a fiscal year or within 60 days following the end of a fiscal year the president/chief executive officer, after consultation with the chief financial officer, may amend the budget for the fiscal year, provided that: (i) the total appropriations do not increase; (ii) the total budgeted expenditures do not increase; (iii) the total combined amount of the operating and non-operating expenditures do not increase; and (iv) such amendment aligns with the strategic plan approved by the board.

Kirkland
to
Hoffman

Although I left them both in, I was not sure the difference between items (ii) and (iii).

From: "William Kirkland, CPA" <william@thechildrenstrust.org>

Date: Friday, October 12, 2018 at 3:24 PM

To: Ken Hoffman <kaceyhof@gmail.com>

Subject: ByLaws: Amendment Language

Discussion
re - Bylaws
matter to be
brought before
the Board.

Good afternoon Ken:

I was told this morning that the Bylaws were returning to the board this coming October meeting to get approval for a few items that were proposed by Lori Nuell. After the bylaws were last passed, Wendy and I took a closer look at Florida Statute and decided that perhaps we should further clarify procedures related to bringing a budget amendment to the finance committee (as the Statute recommends). You'll see highlighted below some language that Wendy, Imran, Jim and I drafted. We were thinking about including this in the bylaws that will be voted upon October 22, but not without your review, thoughts and approval.

spec.
about
bring
a
X
budget
amend.
to
finance
committee.

Without our amendment policies being explicit, I have always been very conservative in my approach when presenting amendments to the committee, and in some instances, members might wonder, why are they bringing this to us? Any amount change from one line item to another was presented. The language below provides some flexibility, but will require us to bring amendments to the committee if we reallocate our total investment in direct services. For instance, if we needed \$million to be withdrawn/added from/to management expenses, to fund an increase/decrease in direct services, this would require an amendment. However, if within the management expenses fund, a reallocation to apply salaries and wages funds to professional consultants, than the CEO can exercise authority to allow for the reallocation.

Next week I am at a conference in New York, but I will be available by phone or email to discuss this. Let me know what you think.

Thanks

3. Budget

a) The fiscal year of The Children's Trust shall begin on October 1 and end on September 30. The president/chief executive officer shall be responsible for submitting to the Finance and Operations Committee for its review a tentative written annual budget, which shall be submitted to the Board at or before the June meeting. The budget shall be from October 1 through September 30 to coincide with MiamiDade County fiscal year.

At the July meeting the Board shall adopt a tentative written annual budget, which shall include its expected income and expenditures for the next fiscal year while providing authority to the president/chief executive officer to make non-substantive changes not to exceed the total budgeted expenditures amount. Such adoption shall require an affirmative vote of a majority vote of the members present.

b) The Board shall adopt a written proposed milage rate at the July meeting. Such adoption shall require an affirmative vote of a majority vote of members present, excluding the Juvenile Court judge who shall neither vote nor be counted in determining the number of those serving on the board for purposes of adopting the annual millage rate, or any estimate thereof.

c) The Board shall, by resolution, adopt and establish a final millage rate at the time, in the manner and accordance with Florida Law. Such adoption shall require an affirmative vote, in accordance with Florida Law, of all members then serving on the Board, excluding the Juvenile Court judge who shall neither vote nor be counted in determining the number of those serving on the board for purposes of adopting the annual

millage rate, or any estimate thereof.

d) The Board shall, by resolution, adopt and establish a final annual budget at the time, in the manner and in accordance with Florida Law. Such adoption shall require an affirmative vote of a majority vote of all members then serving on the Board.

e) The final adopted annual budget and the final milage rate shall be certified and delivered to the MiamiDade County Property Appraiser and Tax Collector as required by Florida Law.

f) As provided for in Section 189.016(6) of the Florida Statues, after consultation with the chief financial officer, the president/chief executive officer may amend the budget at any time during the fiscal year or within sixty days following the end of the fiscal year, for that year, provided that the total appropriations of the fund do not increase; the total budgeted expenditures do not increase; the total combined amount of the operating and non-operating expenditures do not increase; and such amendment aligns with the strategic plan approved by the board.

William Kirtland, CPA

Chief Financial Officer

Tel: (305) 571-5700 Ext: 334 Fax: (305) 854-0289

william.kirtland@thechildrenstrust.org<mailto:william.kirtland@thechildrenstrust.org>

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Tel: (305) 571-5700 Ext: 220
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<image001.png>

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<Bylaws_08242018.docx>

Wednesday, October 24, 2018 at 8:12:22 AM Eastern Daylight Time

Subject: Re: Bylaws

Date: Thursday, October 11, 2018 at 2:10:40 PM Eastern Daylight Time

From: Imran Ali

To: Laurie Nuell

I can talk at 230. Is that ok? In a meeting.

Imran Ali

Chief Of Staff

Tel: (305) 571-5700 Ext: 220

Fax: (305) 857-9592

imran.ali@thechildrenstrust.org

g



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On Oct 11, 2018, at 2:09 PM, Laurie Nuell <laurienuell@gmail.com> wrote:

I just texted you. Let me know when you can talk

On Oct 10, 2018, at 8:09 AM, Imran Ali <imran@thechildrenstrust.org> wrote:

Thanks

Imran Ali

Chief Of Staff

-rel: (305) 571-5700 Ext: 220

Fax: (305) 857-9592

imran.ali@thechildrenstrust.org

g The



al. *fdren'sTnst

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On Oct 10, 201 8, at 8:08

AM, LaurieNuell@gmail.com <laurienuell@gmail.com
wrote:

My cell phone doesn't show any highlights so I
have to get to my computer

Laurie Weiss Nuell

Sent from my iPhone
Please excuse typos!

On Oct 9, 2018, at 2:56 PM, Imran Ali
<imran@thechildrenstrust.org> wrote:

Hi Laurie: please see. I met with Shanika and Leigh. The yellow highlighted comments are the sticking points. Please let me know what you think? Thanks

Imran

Imran Ali

Chief of Staff

Tel: (305) 571-5700 Ext: 220

Fax: (305) 857-9034

imran.ali@thechildrenstrust.org

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<Bylaws_08242018 (lk '18)JL_10032018.docx>(1k 1 0-2-

1. . In the event that a resolution fails to be approved by the assigned committee for any of the following reasons other than a negative committee recommendation it will be forwarded to the Board for the Board's consideration and approval

- a) lack of quorum, or lack of quorum due to recusals, or a tied vote,
- b) If the resolution is not approved because of questions or concerns, staff will be directed to address the concerns and return the resolution to the assigned committee the following month for its consideration and approval.

On Oct 15, 2018, at 5:01 AM, Imran Ali <imran@thechildrenstrust.org> wrote:

Laurie: please see suggested changes to the one section we discussed. We can talk more later today when we meet.

Imran Ali

Chief of Staff

Tel: (305) 571-5700 Ext: 220

Fax: (305) 857-9034

imran.ali@thechildrenstrust.org

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<Bylaws_08242018 (lk 10-2-18)JL_10032018_LN.docx>

Eastern Daylight Time

1

Subject: Re: Updated Bylaws - highlighted version Date:

Monday, October 15, 2018 at 9:19:49 AM

From: Imran Ali To:

Laurie Nuell cc:

James R. Haj

Attachments: image001.png

Yes it can wait until later. Will send the agenda. Finalizing it now. Thanks

Imran Ali

Chief of Staff

Tel: (305) 571-5700 Ext: 220

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imran.ali@thechildrenstrust.org



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From: Laurie Nuell

<laurienuell@gmail.com> Date: Monday,

October 15, 2018 at 9:18 AM To: Imran Ali

<imran@thechildrenstrust.org>

Cc: James Haj <jhaj@thechildrenstrust.org>

Subject: Re: Updated Bylaws - highlighted version

Hi Imran,

This is almost right, but I couldn't figure out how to make it better. The content is perfect, I just think it can be said more clearly. Let's discuss later today, unless it comes to me.' would strike the word still , but that is not the problem.

can this wait until this afternoon?

Wednesday, October 24, 2018 at 8:11:12 AM Eastern Daylight Time

Eastern Daylight Time

also, can you please send me the proposed agenda? I haven't seen it

thanks

2

Eastern Daylight Time

Page of 1

Subject: FW: Revised Bylaws

Date: Monday, October 15, 2018 at 10:53:22 AM

From: Imran Ali

To: Laurie Nuell cc:
James R. Haj

Attachments: Bylaws_08242018 (1k 10-2-18)JL_10032018_LN.docx, image001.png

Laurie; please see new edits. We will discuss later, thanks

Imran Ali

Chief of Staff

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Subject: Revised Bylaws

Date: Tuesday, October 16, 2018 at 8:26:54 AM

From: Imran Ali To:

Neimand Susan cc:

James R. Haj

Attachments: Bylaws_08242018 (1k 10-2-18)JL_10032018_LN.docx, image001.png

Hi Susan: as mentioned last night even though at the retreat where the members approved the bylaws with the permission for the attorneys to make editorial changes, Shanika and Leigh would still like us to get the approval of the few highlighted pieces in the attached updated bylaws. I will forward to them today for approval before Jim sends out the board package on Thursday. We are also looking to make a small edit to the budget section that Ken and Bill are working on. I don't have that language as yet. Will send to you once we agree on it. However, we may not even add it if we decide it is not necessary. Will keep you in the loop. Thanks for your help and support during this process.

Imran

Imran Ali

Chief of Staff

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Wednesday, October 24, 2018 at 8:10:04 AM Eastern Daylight Time

Subject: Re: New version of the section of the bylaws
Date: Tuesday, October 16, 2018 at PM Eastern Daylight Time
From: Imran Ali To:
Laurie Nuell cc:
James R. Haj
Attachments: image001.png

Jim's idea! All the credit goes to him...

Imran Ali

Chief of Staff
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From: Laurie Nuell <laurienuell@gmail.com>
Date: Tuesday, October 16, 2018 at 3:21 PM
To: Imran Ali <imran@thechildrenstrust.org>
Cc: James Haj <jhaj@thechildrenstrust.org>
Subject: Re: New version of the section of the bylaws

All good

I like the simplification. I thought it was getting too confusing and the other things are obvious. Good job On Oct 16, 2018, at 3:19 PM, Imran Ali <imran@thechildrenstrust.org> wrote:

See answers below.

Imran Ali

Chief of Staff

-re: (305) 571-5700 Ext: 220

Fax: (305) 857-9034

imran.ali@thechildrenstrust.org

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From: Laurie Nuell <laurienuell@gmail.com>

Date: Tuesday, October 16, 2018 at 3:16 PM

To: Imran imran@thechildrenstrust.org

Ali <jhaj@thechildrenstrust.org>

Cc: James Haj <

Subject: Re: New version of the section of the bylaws

Laurie Nuell

On Oct 16, 2018, at 2:03 PM, Imran Ali <imran@thechildrenstrust.org> wrote:

Laurie: Jim and I spoke and came up with this version. We think it is simple. We would like to use this. Let me know your thoughts

All resolutions shall be presented to the appropriate assigned committee for consideration before being forwarded to the board for final approval. In the event that a resolution fails to be approved by the assigned committee for lack of quorum, lack of quorum due to recusals, or a tied vote, it will still be forwarded to the board for the board's review and approval.

So, to simplify, this only addresses the situation where there is a lack of quorum, lack of quorum due to recusals or a tied vote.- In other words, no need to even mention if the reso fails, or if committee is not happy they will send it back to staff. is that the idea? I think it works. YES... We won't mention that. It will unfold to that if necessary

On another note we were considering adding the piece below to the budget section. Bill shared with Ken and he is okay with it.

F)At any time during a fiscal year or within 60 days following the end of a fiscal year the president/chief executive officer, after consultation with the chief financial officer, may amend the budget for the fiscal year, provided that: (i) the total appropriations do not increase; (ii) the total budgeted expenditures

do not increase; (iii) the total combined amount of the operating and non-operating expenditures do not increase; and (iv) such amendment aligns with the strategic plan approved by the board. ok with me - I presume the lawyers will say that this has to be approved by the board since it was not discussed at the retreat? Yes and we are presenting to the board for approval.

Question: does this belong in the budget section or the CEO section? We think the budget section is the logical place. Thanks for looking at it.. will send to attorneys

Will wait to hear from you. Thanks

Imran Ali

Chief of Staff

Tel: (305) 571-5700 Ext: 220

Fax: (305) 857-9034

imran.ali@thechildrenstrust.org

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Subject: Additional budget piece in bylaws
Date: Tuesday, October 16, 2018 at 3:29:41 PM Eastern Daylight Time
From: Imran Ali
To: Neimand Susan
Attachments: image001.png

Hi Susan: below is the additional piece we would like to add to the budget section of the bylaws. Laurie and Ken are good with him. If you have any questions please let me know. I will send you a clean version of the entire bylaws later with the changes highlighted. Thanks

F)At any time during a fiscal year or within 60 days following the end of a fiscal year the president/chief executive officer, after consultation with the chief financial officer, may amend the budget for the fiscal year, provided that: (i) the total appropriations do not increase; (ii) the total budgeted expenditures do not increase; (iii) the total combined amount of the operating and non-operating expenditures do not increase; and (iv) such amendment aligns with the strategic plan approved by the board.

Imran Ali

Chief of Staff

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