

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, March 13, 2018 12:05 PM
To: Sanchez, Rodzandra (COE)
Subject: Leigh Kobrinski, Assistant County attorney, (Voting Conflict) INQ18-52
Attachments: INQ 18-40 Imran Ali, Chief of Staff, Miami-Dade County Children's Trust (Voting Conflicts)

Importance: High

INQ 18-52 Kobrinski

From: Perez, Martha D. (COE)
Sent: Wednesday, February 21, 2018 11:32 AM
To: Sanchez, Rodzandra (COE) <Rodzandra.Sanchez@miamidade.gov>
Subject: FW: Seeking your opinion INQ18-52
Importance: High

From: Murawski, Michael P. (COE)
Sent: Wednesday, February 21, 2018 11:28 AM
To: Kobrinski, Leigh (CAO) <Leigh@miamidade.gov>
Cc: Graves, Shanika (CAO) <Shanika.Graves@miamidade.gov>; imran@thechildrenstrust.org; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: FW: Seeking your opinion INQ18-52
Importance: High

Dear Ms. Kobrinski:

You have sought an opinion on behalf of The Children's Trust (TCT) regarding whether the TCT could have their Finance Committee members (who are all TCT Board members) serve as members of the Audit Committee with regard to the selection of an auditor as mandated by Article X of the TCT's Bylaws.

Consistent with INQ 18-40 opinion issued by Mr. Centorino, Ethics Commission's Executive Director, and consistent with your opinion below, it is our opinion that TCT Board members/Finance Committee members may not serve as members of the Audit Committee and then be permitted to vote, in their capacity as Board members, on the recommendations sent to the TCT Board by the Audit Committee. I agree with your analysis below that the lack of separation between the two roles is inherently conflicting and problematic.

Moreover, in addition to the heightened appearance of impropriety standard imposed on the TCT by its own Conflict of Interest and Code of Ethics Policy (the Policy), Section III (B) of the Policy entitled, "Cone of Silence," dictates that such an arrangement would violate the Policy. Specifically, the Cone of Silence restricts communication between TCT Board members and review committee members (i.e., Audit Committee members); and, restricts communication between review committee members and TCT Board members and potential bidders, vendors and service providers. Thus, having a TCT Board/Finance committee member simultaneously serving as a Review committee member is inherently conflictive and violative of the Cone of Silence. See Section 2-11.1(t), County Ethics Code

This opinion is based on the facts as presented. If any of the facts change please contact us.

Sincerely,

Mike Murawski

From: Kobrinski, Leigh (CAO)
Sent: Tuesday, February 20, 2018 10:06 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Cc: Graves, Shanika (CAO) <Shanika.Graves@miamidade.gov>; Imran Ali <imran@thechildrenstrust.org>
Subject: RE: Seeking your opinion

Good morning Joe and Mike (Joe's away message refers us to you Mike),

Imran, thank you for preparing this email requesting an opinion from the COE. However, I would like to clarify a few points represented below.

First, TCT must follow the auditor selection procedures set forth in FS 218.391. This statute sets forth certain roles for "the governing body" and "the audit committee." The audit committee, pursuant to FS 218.391, establishes factors to use for the evaluation of audit services to be provided by a certified public accounting firm, announces RFPs, evaluates RFPs, and recommends three firms deemed to be the most qualified to perform the required services to the governing body. The governing body then selects one of the three firms recommended by the audit committee. Imran's recollection from prior years is that, in the past, TCT's finance committee has served as the audit committee. But this caused Shanika and myself some concern in light of the lack of separation between the two roles (the audit committee and the governing body), or, at the very least, a recusal of the board members who served in the audit committee when the vote came before them as a TCT board member.

Based on our concern, Shanika and I asked our procurement attorneys about this question and they stated that it is highly unusual for members of a governing body (who have the ultimate vote on which firm to select) to *also* serve on the very selection committee that ranks RFP responses and makes recommendations to the governing body for a final vote. This was also a concern to us in light of TCT's policy that prohibits any appearance of impropriety.

Based on this review, our advice to TCT was that members of the finance committee (all of whom are TCT board members) not serve as members of the audit selection committee. This advice was not, as Imran stated below, based purely on TCT's bylaws. Instead, in an effort to read FS 218.391, TCT's bylaws about the role of the finance committee, TCT's appearance of impropriety prohibition, and the information from our procurement attorneys, in a consistent and cohesive fashion, we advised that the members of the finance committee could fulfill their role of "overseeing the selection of auditors" by assisting the audit committee in establishing factors to use for the evaluation of audit services and, once the evaluations and recommendations by the audit committee have taken place, serve as the "governing body" (F.S. 218.391 (4)) by selecting one of the three firms recommended by the audit committee and making a recommendation to the full board for approval. If, instead of following this process, TCT wished to have their finance committee members serve as members of the audit committee, we advised that they seek an opinion from your office.

Thank you,

Leigh C. Kobrinski
Assistant County Attorney

County Attorney's Office
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Miami, Florida 33128
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(305) 375-5634 (fax)
Assistant: Beverly Jacobs (305) 375-5110

From: Imran Ali [<mailto:imran@thechildrenstrust.org>]
Sent: Tuesday, February 20, 2018 9:28 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Graves, Shanika (CAO) <Shanika.Graves@miamidade.gov>; Kobrinski, Leigh (CAO) <Leigh@miamidade.gov>
Subject: Seeking your opinion

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Hi Joe: thanks again for the last email and opinion regarding the board members recusal. I have another request.

The Children's Trust (TCT) policy requires us to change our auditors every five years. Our bylaws state that our finance committee will "Oversee the selection of auditors, banks and investment advisors". In the past, once TCT has received applications in response to an RFP, members of the finance committee along with staff have helped to review and score the applications. Based on the score each application received, the finance committee makes recommendations to the full board for approval. Our attorneys, who are copied here, have opined that members of the committee should not review applications as the bylaws state that they should just oversee the selection of the auditors. They feel this may pose a conflict of interest and more importantly, the applications review and ultimate vote by the finance committee members on the successful candidate, may not be a fair perception of the selection for the auditor.

Our finance committee chair and treasurer is of a different opinion and feels not only should be finance committee members be allowed to review the applications but be allowed to vote on the final selection at the board meeting.

The question is how do you see this as an ethical issue. Please let me know. I am available to answer any questions should you have any. Thanks

Imran

My cell is 305 322 9333. Best way to get me.

Imran Ali

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The Children's Trust values Integrity, Trust, Teamwork, Quality and Leadership.

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