

Sanchez, Rodzandra (COE)

From: Arrojo, Jose (COE)
Sent: Tuesday, January 08, 2019 2:53 PM
To: djove@hialeahfl.gov
Cc: Mendez, Hillah S.; Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE); Turay, Radia (COE); Sanchez, Rodzandra (COE); Ross, Rachelle (COE)
Subject: INQ 19-001, Voting Conflict - CBA Impasse Resolution, Section 2-11.1(d)
Attachments: INQ 19-001, Voting Conflict - CBA Impasse Resolution, Section 2-11.1(d).docx

Dear Mr. Jove:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance. You advise that a Council member may have a potential prohibited voting conflict regarding an impasse vote affecting rank and file members of a firefighter collective bargaining unit. The Council member's son is a firefighter.

Attached is INQ 19-001 addressing your question. Do not hesitate to contact me if you need further assistance and kindly thank the Council member for engaging with us.

Thank you again for contacting us.

Best regards,

Jose J. Arrojo

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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: David Jove, Assistant City Attorney
on behalf of Hialeah Council Member

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 19-001

DATE: January 7, 2019

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts: It is anticipated that the Hialeah City Council will vote on the resolution of a bargaining impasse between IAFF Local 1102, the collective bargaining unit agent that represents over two hundred rank and file employees of the city's fire department, and the City of Hialeah.

You advise that members of the collective bargaining unit will be similarly affected by the Council's vote. You further advise that a Council member has a son employed as a city firefighter that is a member of the collective bargaining unit.

Issue: Does the elected official whose son is a member of a collective bargaining unit at impasse with the city, have a voting conflict that precludes him or her from voting or otherwise participating in the resolution of the bargaining impasse between the bargaining unit agent, IAFF Local 1102, and the City of Hialeah?

Discussion: Section 2-11.1(a) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance (Ethics Code), clarifies that the Ethics Code sets minimum standards of ethical conduct and that its provisions are made applicable to officials and employees of county

government and to all municipal governments within Miami-Dade County, including the City of Hialeah.

In your request for guidance you cite to several opinions of the Florida Commission on Ethics and its interpretation of applicable state statutes. However, Section 2-11.1 (d) of the Ethics Code, prohibits elected officials from voting on or participating in any matter presented, if the official *would or might, directly or indirectly, profit or be enhanced* by the action of the City Council. This conflict voting prohibition is stricter than the state law standard codified in Section 112.3143 (1)(d), Florida Statutes, which provides that “No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss...” (INQ 14-86).

Given the enhanced conflict voting prohibition in the Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in circumstances where an official might, directly or indirectly, profit or be enhanced by a vote. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. (*See* RQO 15-04)

In applying the Ethics Code conflict voting prohibition, we have opined that an elected official should not vote or participate (including attendance at a workshop) in the consideration of alternative code enforcement system because the official’s spouse was the municipal code compliance director. Therefore, the reorganization of the code compliance department, including the use of special masters, could impact the spouse’s job duties, work performance measurements, and salary and thus the elected official would or might directly or indirectly be enhanced by the vote. (INQ 13-92)

More recently, we similarly opined that an elected official should not vote or participate on the selection of a city manager because the official’s spouse is employed by the city as an at-will department director and most if not all of her employment terms could be impacted by the newly selected city manager. Thus, the elected official would or might directly or indirectly be enhanced by the vote. (INQ 18-251)

However, the rationale underlying those opinions focused on the unique impact that the matter under consideration could have on the elected official’s family member and the corresponding possible enhancement, direct or indirect, on the voting official. The family members in those two informal opinions were in a class of one that could be singularly and significantly impacted by the vote and the spousal elected official could likewise be affected.

Conversely, the impasse resolution matter under consideration will not have a unique impact on the Council member's firefighter son because he is in a bargaining unit that exceeds two hundred total members. The firefighter son will not be singularly impacted by the vote.

While not entirely consistent with the facts underlying your request for guidance, we recently opined that a county elected official could vote on the ratification of a collective bargaining agreement between the county and a large bargaining unit comprised of medical professionals employed by a public hospital. The county official's daughter is employed by the same public hospital as a registered nurse case manager, albeit not in the bargaining unit covered by the agreement. (INQ 18-256)

We concluded in that informal opinion that the item under consideration did not present any likelihood that the elected official would, personally or professionally, be enhanced by the vote because the item would not confer a unique or special benefit on the nurse daughter.

Opinion: The proposed vote concerns the resolution of a bargaining impasse between IAFF Local 1102, a collective bargaining agent that represents over two hundred rank and file employees of the city's fire department, and the City of Hialeah. A Council member's son is employed as one of a greater class of rank and file firefighters.

I do not believe that there is any likelihood that the Council member will personally or professionally be enhanced by the item under consideration because the item will not confer some special or unique benefit on the firefighter son. Therefore, I do not believe that the Council member is prohibited under Section 2-11.1(d) from participating or voting on this item.

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.