

## **Sanchez, Rodzandra (COE)**

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**From:** Perez, Martha D. (COE)  
**Sent:** Thursday, February 14, 2019 4:04 PM  
**To:** nicole@thenewsdirectors.com  
**Cc:** Arrojo, Jose (COE); Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Turay, Radia (COE); Sanchez, Rodzandra (COE); Graves, Shanika (CAO)  
**Subject:** INQ 19-16  
**Attachments:** INQ 19-16 Gomez.docx

Dear Ms. Gomez:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance. Attached is INQ 19-16 addressing your question. Please do not hesitate to contact us if you have any questions or if we may be of further assistance.

Sincerely,

**Martha D. Perez**  
Staff Attorney  
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST  
19 West Flagler St. Suite 820  
Miami, FL 33130  
(305)350-0656  
[PEREZMD@miamidade.gov](mailto:PEREZMD@miamidade.gov)

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## 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](http://ethics.miamidade.gov)

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### MEMORANDUM

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**TO:** Nicole Gomez  
Board Member, Children's Trust

**FROM:** Martha D. Perez  
Staff Attorney

**SUBJECT:** INQ 19- 16, Voting Conflict (Section 2-11.1(d), County Ethics Code;  
Children's Trust Conflict of Interest Policy and Bylaws)

**DATE:** February 14, 2019

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a voting conflict of interest issue.

Question Presented: Whether a conflict of interest exists for a member of the Board of Directors of the Children's Trust, to participate and/or vote on an RFQ where the member has previously provided consulting services to one of the proposers and remains on that proposer's roster of affiliated consultants.

Facts: Pursuant to Section 125.901, Fla. Stat., Miami-Dade County adopted an ordinance in 2002 creating the Children's Trust (CT), an independent special district, to address, through funding initiatives, the needs of children in the County.

The Ordinance provides, *inter alia*, that the CT shall be regulated by the Conflict of Interest and Code of Ethics Ordinance (the County Ethics Code).

CT's Conflict of Interest and Code of Ethics Policy states that a board member shall not vote on any matter presented to the CT Board if the member will receive a direct financial benefit from the board action, or, if, pursuant to the State Ethics Code at Section 112.3143, the matter to be voted on would inure to the member's special gain or loss; or, would inure to the special private gain or loss of any principal by whom the member is retained, a relative or the member's business associate. *See* III (A)(1) of the Policy. Additionally, the Policy states that "...board members ... will avoid an appearance of impropriety." *See* III (D) of the Policy. Finally, The Policy also empowers the Ethics Commission to review,

interpret, render advisory opinions, letters of instruction and enforce the Policy provisions. *See* III (E)(1) of the Policy (Query whether the Ethics Commission may interpret or enforce the State’s conflict of interest provisions contained in the Policy).

CT’s Bylaws provide that CT members shall comply with all state and *local laws* regarding conflict of interest *See* Art.VI, Section of the Bylaws.

Consequently, pursuant to the authority granted by the Ordinance and underscored by the CT’s Policy and Bylaws, this office may consider and opine on whether a board member has a conflict of interest affecting his or her vote or participation in a CT procurement matter.

You are an Associate at LSN Partners, LLC, a government relations consulting group. You were appointed to the CT Board by former Governor Scott in November 2018. Mr. Brian Andrews, President of The News Directors, Inc. (ND), has advised that you “have had a contractor relationship [with his entity] on past unilateral projects not affiliated in any way with the Children’s Trust.” However, ND’s website shows that you are part of ND’s “team” in the area of Public Affairs. *See* [www.newsdirectors.org](http://www.newsdirectors.org). Notwithstanding, according to Mr. Andrews, although you are currently not working on any active projects with ND, you remain part of ND’s roster of affiliated consultants’ contractors available to its clients.

ND will be pursuing an RFQ with the CT. You are not part of the team involved in the RFQ and you will not become involved with the RFQ should ND be awarded the contract.

Discussion: The Ethics Commission may render assistance pursuant to the Ordinance, CT’s Bylaws and Conflict of Interest Policy. However, any requests for an interpretation or application of Florida Statute 112.3143 to the issue described herein should be directed to the State Ethics Commission.

In light of the role that CT board members have with regard to procurement matters, your question is analyzed pursuant to Section 2-11.1(d) of the County Ethics Code, *Voting Conflicts*, which prohibits a member from voting and/or participating in a matter presented to the board if he or she has any prohibited relationship listed in the ordinance ( officer, director, partner, of counsel, *consultant*, employee, fiduciary, etc.). The ordinance also prohibits the member from voting if he or she “would or might, directly or indirectly, profit or be enhanced by the action of the [board]...”<sup>1</sup>

The Ethics Commission has opined that an automatic prohibited conflict of interest would be present if the voting member has a prohibited relationship such as consultant . *See* RQO 15-04; *See* INQ 16-158, INQ 13-284

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<sup>1</sup> This section of the County Ethics Code applies to the Mayor and members of the Board of County Commissioners (BCC); however, by implication, members of the Children’s Trust(CT) board may be included for purpose of analysis because, as an independent special district in matters of procurement, the role and authority of CT members mimics the role of the BCC, as ultimate decision-makers of a solicitation such as the one described herein.

Furthermore, it is quite possible that, given your past and current position with ND, a proposer, your professional business relationship with ND might be enhanced by your participation and vote on this RFQ.

This situation also implicates Section 2-11.1(g) of the County Ethics Code (*Exploitation of official position*). This section provides that a board member may not use his or her official position to secure special privileges or exemptions for himself, herself or others. While there is no evidence to suggest that you would use your position with the CT board to secure the award of the RFQ to ND, this provision, along with the heightened “appearance of impropriety” ethical standard in the CT Policy, should be enough to avoid participation and/or vote on this item. *See* INQ 16-273

Opinion: Consequently, we recommend that you absent yourself from the CT meeting during the discussion of the RFQ where ND is one of the proposers and refrain from voting or participating in this matter in accordance with Section 2-11.1(d) of the County Ethics Code.

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.