

Sanchez, Rodzandra (COE)

From: Arrojo, Jose (COE)
Sent: Thursday, February 21, 2019 10:24 AM
To: Graves, Shanika (CAO)
Cc: Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Turay, Radia (COE); Perez, Martha D. (COE); Sanchez, Rodzandra (COE)
Subject: INQ 19-19, Voting Conflict of Interest, Lourdes P. Gimenez Children's Trust, Sec.2-11.1(d)

Dear Ms. Graves:

Thank you for engaging with the Miami-Dade County Commission on Ethics and Public Trust regarding a voting conflict of interest opinion for Lourdes P. Gimenez, a Board Member of The Children's Trust.

Attached is INQ 19-19.

Also, thank you for making yourself available to consult with us regarding your office's interpretation of various County ordinances.

Best regards,

Jose J. Arrojo
Executive Director
Miami-Dade Commission on Ethics and Public Trust
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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Lourdes P. Gimenez
Board Member
The Children's Trust

FROM: Jose J. Arrojo
Executive Director

Martha Diaz-Perez
Staff Attorney

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

DATE: February 20, 2019

CC: All COE Legal Staff

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 or vote on procurements matters relating to Miami-Dade County (MDC) or Miami Dade County Public Schools (MDCPS) when the member's spouse is the Mayor of Miami-Dade County and her sibling is a member of the School Board.

Jurisdiction: Pursuant to Section 125.901, Florida Statutes, Miami-Dade County adopted an ordinance in 2002 creating the Children's Trust. Section 2-1521, of the Code of Miami-Dade County, establishes the independent special district called "The Children's Trust." The purpose of The Children's Trust is to fund improvements for the children of Miami-Dade County in the areas of health, development, safety, parental responsibility, community responsibility and other necessary and important children's services.

Section 2-1529, of the Code of Miami-Dade County, provides that the Children's Trust shall be regulated by Section 2-11.1 of Miami-Dade County Code ("County Ethics

Code").¹ While clearly providing that the Children's Trust is regulated by the County Ethics Code, there is an awkward clause that follows the grant of regulatory authority: "including but limited to the gift disclosure and financial disclosure requirements." It is the current legal opinion of the County Attorney's Office, drafters of the ordinance and counsel to the Children's Trust, that this clause in the ordinance is a scrivener's error and that the grant of regulatory authority providing that the Children's Trust *shall* be regulated by Section 2-11.1 of the County Ethics Code applies.

The Children's Trust's Bylaws also provide that Members of the Board "shall comply with all state and local laws regarding conflict of interest." Section 2-11.1, the County Ethics Code, is clearly a local conflict of interest law. *See Art.VI, Section of the Bylaws.*

Finally, the Children's Trust's Conflict of Interest and Code of Ethics Policy provides that "...board members ... will avoid an appearance of impropriety." *See III (D) of the Policy.* The same Conflict Policy provides that the Commission on Ethics has jurisdiction, and thus is empowered to review, interpret, render advisory opinions and letters of instruction and enforce The Children's Trust Conflict Policy. *See Section III. E.1. of the Conflict Policy.*

Consequently, pursuant to the authority granted by the Ordinance and underscored by the Children's Trust's Policy and Bylaws, the Commission on Ethics may consider and opine on whether a board member has a conflict of interest affecting his or her vote or participation in a procurement matter. (*See INQ 19-16*)

Facts: You are a gubernatorial appointee to the Children's Trust's Board of Directors. You were previously employed for over three decades with Miami-Dade County Public Schools (MDCPS). Your spouse is Carlos Gimenez, the Mayor of Miami-Dade County, Florida (MDC). Your sibling is Mari Tere Rojas, a member of the School Board, representing District 6.

You may be called to vote upon procurement matters, including the allocation of funds to MDC and MDCPS.

Discussion: In light of the similarity of the role that Children's Trust board members have with members of the Board of County Commissioners with regard to procurement matters, your question is analyzed pursuant to Section 2-11.1(d) of the County Ethics Code,

¹ Sec. 2-1529. - Applicability of State and County Laws. The Children's Trust shall be regulated by: Chapter 286 of Florida Statutes, ("Sunshine Law") including but not limited to the notice requirements; Chapter 119 of Florida Statutes ("Public Records Act"); Chapter 112, Part III of Florida Statutes ("Code of Ethics for Public Officers and Employees"); *Section 2-11.1 of Miami-Dade County Code ("Conflict of Interest and Code of Ethics Ordinance")*, including but limited to the gift disclosure and financial disclosure requirements; and Article IB of Miami-Dade County Code ("Standards for Creation and Review of Boards Generally") to the extent that the requirements of this article do not conflict with the requirements of Sec. 125.901 of Florida Statutes ("Children's Services"). (*emphasis added*)

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]...”²

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...” (*See 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 instances 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*)

We have repeatedly opined in the past that the issues of voting conflict for similarly situated persons is narrowly described as whether you might, directly or indirectly, profit or be enhanced by the item in question. Put another way, the analysis should focus on whether the proposed Board action will present any likelihood that you would, personally or professionally, be affected in any way by the item.

As regards adult family members, your spouse, the County Mayor, and your sister, the School Board member, again our prior opinions on the issue of a voting conflict have narrowly considered whether some special benefit might flow from your vote to a close family member. (*See INQ 11-85, INQ 13-211*)

The rationale underlying those family member opinions focuses on the unique impact that the matter under consideration could have on the elected official’s family member and the corresponding possible enhancement. If the family members are in a class of one, or of a limited group of persons that could be singularly and significantly impacted by the vote, then it can be objectively suggested that the voting official could likewise be affected.

Conversely, if the matter under consideration will not have a unique impact on the voting official’s family because he or she is included in a large class, then the family members would not be singularly impacted by the vote.

² 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 board may be included for purpose of analysis because, as an independent special district in matters of procurement, the role and authority of Children’s Trust members mimics the role of the BCC, as ultimate decision-makers of a solicitation such as the one described herein.

MDC is the county government for a metropolitan area with a population of approximately 2.7 million; it employs over twenty-five thousand persons; and, has an annual budget of approximately eight billion dollars. MDCPS is the fourth largest school district in the nation; employs over 40,000 persons; and, has an annual budget of approximately five billion dollars. Accordingly, it is unlikely that any matter on which you will be called upon to vote on involving MDC or MDCPS is going to present any likelihood that some special benefit might flow from your vote to your spouse or your sister.

Opinion: Consequently, we do not believe that Section 2-11.1(d) of the County Ethics Code requires you to absent yourself from Children's Trust meetings during the discussion of a procurement matter involving MDC or MDCPS nor should there be a blanket prohibition on your voting or participating in these matters in accordance with.

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.