

Sanchez, Rodzandra (COE)

From: Arrojo, Jose (COE)
Sent: Thursday, February 21, 2019 5:07 PM
To: Sanchez, Gerald (CAO)
Cc: Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Ross, Rachele (COE); Sanchez, Rodzandra (COE); Turay, Radia (COE); Perez, Martha D. (COE)
Subject: INQ 19-21 Voting Conflict Official Position, Sec. 2-11.1(d), (g) Esteban L. Bovo/Oscar de la Rosa

Dear Mr. Sanchez:

Please thank Commissioner Bovo for requesting guidance from the Miami-Dade Commission on Ethics and Public Trust regarding a potential voting conflict resulting from his step-son's employment.

Attached is INQ 19-21.

Best regards,

Jose

Jose J. Arrojo

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MEMORANDUM

TO: Honorable Esteban L. Bovo
District 13 Commissioner

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 19-21, Voting Conflict and Official Position, Sections 2-11.1(d), (g)
Family Member Employed by Lobbyist/Law Firm

DATE: February 21, 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 potential voting conflict.

Facts: Esteban L. Bovo is an elected County Commissioner. His adult step-son is Oscar de la Rosa. Mr. de la Rosa is a law student and is employed by the Lasarte Law firm where he assists attorneys on legal matters primarily related to real estate and development.

One of the Lasarte Law Firm clients is Aecom. Aecom is a large international company engaged in design, build, financing and operation of significant infrastructure projects. It reports that it does business in more than 150 countries around the world. Aecom is currently engaged as a County vendor or proposer on more than one project.

In his legal assistant capacity, Mr. de la Rosa has been tasked by the Lasarte Law Firm to work on some matters involving Aecom where the company is engaged with the County.

Issues: Does a blanket prohibited voting conflict exist that would prevent Commissioner Bovo from participating or voting on any matters where the Lasarte Law Firm has been retained to represent Aecom, or rather, if a prohibited voting conflict exists, is it limited to those specific matters on which Mr. de la Rosa has worked on?

Discussion: Section 2-11.1(d) of the County Ethics Code, *Voting Conflicts*, prohibits a Commissioner 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]...”

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 contained 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.

We have repeatedly opined in the past that the issues of voting conflict for Commissioners that have a relationship with a party transacting with the County is narrowly described as whether the official 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 the official would, personally or professionally, be affected in any way by the item.

As regards adult family members, in this case the Commissioner’s step-son, Mr. de la Rosa, our prior opinions on the issue of a voting conflict have narrowly considered whether some special benefit might flow from a vote to a close family member that has a prohibited relationship with the entity that will be affected by the vote. (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 uniquely 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.

Mr. de la Rosa’s situation is somewhat unique because he is not employed by an entity that would be directly impacted by a vote of the Board, in this case Aecom, but rather by the advocate for the entity, the Lasarte Law Firm.

We have previously provided an opinion to Mayor Carlos Gimenez, a non-voting official but with final executive authority over significant procurement and governance matters, whose son was at the time employed by Becker Poliakoff, a firm that like the Lasarte Law Firm was representing parties transacting business with the County.

In that prior opinion, our office interpreted Section 2-11.1(g), *Exploitation of Official Position*, that prohibits an official from using his or her official position to secure special benefits for himself or others except as permitted by law. Under this section, a decision to award a contract to a company that employs the official's family member could be a form of exploitation. Similarly, exploitation could be found if the official's family member, while not employed by the company that would be affected by the vote, was engaged in lobbying, directly or indirectly, in support of company that did not employ him. (See INQ 11-133)

Accordingly, we opined that as regards the Mayor's son, the Mayor could exercise legal authority on matters where his son's employer, Becker Poliakoff, was retained by a party transacting with the County. However, if his son was directly involved or assigned by the law firm to lobby or advocate on the specific matter, then Section 2-11.1(g), would prevent his involvement.

Borrowing from our analysis in that prior opinion and applying to the facts of this case, we would advise that neither Sections 2-11.1(d) or 2-11.1(g) of the Ethics Code would impose a blanket prohibition on Commissioner Bovo's participation or vote on Aecom matters where the Lasarte Law Firm is engaged, even though it employs Mr. de la Rosa.

However, if Mr. de la Rosa has been assigned to work by the Lasarte Law Firm on the Aecom matter that is pending consideration by the Board, then Commissioner Bovo should not participate or vote on that specific matter.

This opinion is limited to the facts as you and County staff 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.