

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, April 10, 2019 4:36 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ 19-27, Voting Conflict, 2-11.1(d), Removal of the Village Attorney

INQ 19-27 Dubois

From: Arrojo, Jose (COE)
Sent: Friday, March 1, 2019 2:49 PM
To: jdubois@palmettobay-fl.gov; JDubois@eyecast.com
Cc: dlehtinen@palmettobay-fl.gov; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Anderson, Machell (COE) <Machell.Anderson@miamidade.gov>
Subject: INQ 19-27, Voting Conflict, 2-11.1(d), Removal of the Village Attorney

Dear Vice Mayor Dubois:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust regarding a potential voting conflict. You have advised that you may seek the removal of the Village Attorney.

Attached you will please find INQ 19-27, a responsive ethics opinion to your question regarding a potential voting conflict.

Please do not hesitate to contact me should you have any questions.

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: Honorable John Dubois
Vice Mayor, Village of Palmetto Bay

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 19-27, Voting Conflict, Section 2-11.1(d)
Removal of the Village Attorney

DATE: March 1, 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: John Dubois is the Vice Mayor of the Village of Palmetto Bay (Village) and a voting member of the Village Council. John Dubois is also a principal in Indigo Street, LLC (“Indigo”). Indigo owns two parcels in the Village.

Lehtinen Schultz, PLLC, (Lehtinen Schultz) serves as the Village Attorney.

Indigo is currently a party to litigation against the Village where it seeks judicial review of the Village’s approval of a site plan for a Shores of Palmetto Bay, LLC (Shores) development. In that litigation, the Village is represented by the Village Attorney, Lehtinen Shultz. (*Indigo Street, LLC v. Village of Palmetto Bay and Shores at Palmetto Bay, LLC*, Miami-Dade Circuit Court, Appellate Division, Case No. 2018-000241-AP-01) ¹

¹ There is a separate matter involving Wayne Rosen and the Shores, where they have sued Indigo and John Dubois. Lehtinen Schultz does not represent John Dubois in that matter. John Dubois will be represented by counsel provided by the Florida League of Cities because there has been an internal decision by the League that John Dubois is being sued in his official capacity. That

In his capacity as Vice Mayor and a voting member of the Village Council, John Dubois may sponsor a resolution to remove Lehtinen Schultz as the Village Attorney. The resolution would allow Lehtinen Schultz to remain as counsel for the Village in all pending litigation, including the above referenced Indigo matter filed against the Village. Also, the resolution is solely to consider the removal of Lehtinen Schultz as Village Attorney and does not involve any consideration of litigation strategy or settlement of the Indigo case against the Village.

Issue: Does a prohibited voting conflict exist that would prevent Vice Mayor Dubois from sponsoring a resolution and participating and voting on the removal of Lehtinen Schultz as the Village Attorney?

Discussion: Section 2-11.1(d) of the County Ethics Code, *Voting Conflicts*, prohibits an elected official from voting and/or participating in a matter presented to the elected body if he or she has any prohibited relationship with a person or entity that would be or might be, directly or indirectly affected by the action of the Commission. The relationships listed in the ordinance include: officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, creditor and debtor. The ordinance also prohibits the official 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). 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)

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 issue of voting conflict for elected officials 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 Commission action will present any likelihood that the official would, personally or professionally, be affected in any way by the item in a manner distinct from the public generally.

litigation is referenced only as there are similar parties involved but it does not factor into this ethics opinion.

To restate, the resolution is solely to consider removal of Lehtinen Schultz as Village Attorney and does not involve any consideration of litigation strategy or resolution of the Indigo case against the Village. You have also made it clear that any resolution to remove Lehtinen Schultz as Village Attorney will not cause an interruption in its defense of the Indigo litigation because it would remain as counsel for the Village in that case.

Accordingly, from the fact pattern that you have provided, you do not have a prohibited financial or employment relationship with Lehtinen Schultz. Additionally, you will not, directly or indirectly, profit or be enhanced by the item nor is there any likelihood that you will, personally or professionally, be affected in any way by the action.

Opinion: The voting conflict provisions contained in Section 2-11.1(d) of the Miami-Dade Ethics Code do not create a prohibited voting conflict scenario regarding your participation or vote on the matter to remove Lehtinen Schultz as Village Attorney.

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.