

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, April 23, 2019 2:18 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ-19-46 Voting Conflict, 2-11 (d); Exploitation of Official Position, 2-11.1 Family Member Contracted by Lobbyist/Law Firm
Attachments: Honorable Manolo Reyes INQ 19-46.pdf

INQ 19-46 Reyes

From: Anderson, Machell (COE)
Sent: Tuesday, April 23, 2019 2:06 PM
To: 'vmendez@miamigov.com' <vmendez@miamigov.com>; 'georgewysong@miami-police.org' <georgewysong@miami-police.org>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Sanchez, Rodzandra (COE) <Rodzandra.Sanchez@miamidade.gov>
Subject: INQ-19-46 Voting Conflict, 2-11 (d); Exploitation of Official Position, 2-11.1 Family Member Contracted by Lobbyist/Law Firm

Dear Ms. Mendez and Mr. Wysong,

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

Attached is INQ 19-46 that addresses that issue.

Best regards,

Machell Anderson
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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 Manolo Reyes
Commissioner, District 4, Miami

Victoria Mendez, Esq.
Miami City Attorney

George Wysong, Esq.
Assistant City Attorney

FROM: Jose J. Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 19-46, Voting Conflict, 2-11.1(d); Exploitation of Official Position, 2-11.1 (g). Family Member Contracted by Lobbyist/Law Firm

DATE: April 23, 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:

Becker & Poliakoff, P.A. (Becker) is a Florida based, multi-office law firm with additional offices in Washington, D.C, New York and New Jersey. Becker has a large portfolio of clients. Amongst its clients, Becker is a publicly registered lobbyist for the cities of South Miami and Pinecrest, and the Miami-Dade Expressway Authority (MDX). Becker was also formerly retained to lobby on behalf of the City of Miami and was so engaged as recently as 2018.

Manuel "Manny" Reyes (Mr. Reyes) is a lobbyist and the President of Pereira Reyes Consulting, Inc., a Florida corporation (Pereira Reyes). Pereira Reyes lobbies on behalf of several local principals. Pereira Reyes represents South Miami and Pinecrest, MDX, and Metro-Dade Fire Fighters, Local 1403.

It is reported, and publicly available records confirm, that Pereira Reyes' representation of South Miami, Pinecrest and MDX is performed as subcontractor for Becker. Becker apparently subcontracts with other lobbying firms to create lobbying teams for individual clients. Thus, there is a business relationship between Pereira Reyes, Mr. Reyes and Becker.

Neither Mr. Reyes nor Pereira Reyes is registered to lobby in the City of Miami nor have they been retained to lobby for the City.

The Miami City Manager declined to reengage Becker as a lobbyist for the City for the 2019 legislative session. That decision was the subject of a Resolution adopted by the Miami City Commission.

At a February meeting, the Miami City Commission unanimously adopted City of Miami Resolution No. R-19-0073 to approve the continuation of the professional services of Becker, Southern Strategy Group, and Rubin, Turnbull & Associates, f/k/a The Rubin Group. The Commission by resolution directed that these entities would continue as the City of Miami's only lobbying firms, until a Request for Letters of Interest ("RFLI") or similar competitive solicitation is finalized and brought before the City Commission for an award.

Manolo Reyes (Commissioner) is the elected City of Miami Commissioner for District 4. The Commissioner participated in and voted on the Resolution to reverse the City Manager's decision not to reengage Becker.

Mr. Reyes is the Commissioner's son. Thus, the Commissioner participated in and voted on an item involving Becker while that firm is party to a contractual relationship with his son, Mr. Reyes.

Issue:

Does a blanket prohibited voting conflict exist that would prevent Commissioner Reyes from participating or voting on any matters involving Becker, or rather, if a prohibited voting conflict exists, is it limited to those specific matters on which Pereira Reyes or Mr. Reyes has been engaged?

Discussion:

Section 2-11.1(d) of the Miami-Dade County Ethics Code ("Ethics Code"), Voting Conflicts, prohibits a Commissioner from voting and/or participating in a matter presented to the Commission if he or she has any prohibited relationship listed in the Ethics Code (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.). The Ethics Code 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 voting conflict 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 voting conflict 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 Ethics Code 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 Commissioners that do not have an employment or business relationship with a party transacting with their municipality is narrowly described as whether the official would or might, directly or indirectly, profit or be enhanced by the item in question. Put another way, the analysis should focus on whether the proposed action will present any likelihood that the official would, personally or professionally, be affected in any way by the item. (See RQO 15-04)

As regards adult family members of elected officials, in this case the Commissioner’s son Mr. Reyes, 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 19-21, INQ 19-19, INQ 19-18, INQ 18256)

As noted in RQO 15-04, the word “might” in the analysis of Sec. 2-11.1(d) of the Ethics Code requires that there be, at the very least, “a reasonable possibility of profit or enhancement.” The opinion notes that “the standard applied should require more than a remote or speculative possibility, it should cover a potential benefit that may be realistically expected to occur under known circumstances.”

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. (See RQO 06-64, INQ 13-92)

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 or will not be uniquely impacted, then the family members would not be singularly impacted by the vote. (See RQO 12-15, INQ 13-211)

We have previously provided opinions to a somewhat similarly situated elected County official. In INQ 11-133, the Ethics Commission considered whether a prohibited conflict was created as the result of the Mayor’s son engagement with a law firm that was

transacting with the County. The Mayor is a non-voting official that nevertheless has final executive authority over significant procurement and governance matters.

In that 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. It was noted that under the 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, 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), then this unique position or involvement would create a prohibited conflict for the Mayor.

Even more recently, the Ethics Commission opined that Sections 2-11.1(d) and (g) of the Ethics Code did not impose a blanket voting conflict prohibition on a County Commissioner's consideration or vote on matters affecting a large construction and engineering firm represented by a law firm that employed the Commissioner's step-son as a law clerk. However, if the family member was assigned to work on the firm matter that was being considered by the Board, then the Commissioner should not participate or vote on that specific matter. (See INQ 19-02)

Borrowing from the rationale underlying the above detailed ethics opinion precedents, then if Becker is retained by a party affected by a matter before the Commission, or is the actual affected party, then the Commissioner is not barred from participating or voting on the matter. However, if Mr. Reyes has been engaged with Becker on a matter being considered by the Commission, where Becker is representing an affected party, then the Commissioner should not participate or vote on that specific matter.

Conclusion:

Section 2-11.1 (d) of the Ethics Code does not impose a blanket prohibition on Commissioner Reyes' participation or vote on matters involving Becker.

However, both Section 2-11.1. (d) and Section 2-11.1(g) require that if Mr. Reyes has been engaged with Becker on a matter being considered by the Commission then the Commissioner should not participate or vote on that specific matter.

Further, please note that that the Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants, nor does it

address the subjective mindset of an elected official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal or family considerations. Any public servant under such circumstances must use his or her own judgment in determining the proper course of action.

This opinion is limited to the facts as you and City 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.