



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Doug Kraft
Councilmember, Village of Pinecrest

Ethan Shapiro
Board Member, Village of Pinecrest

Robert Meyers, Esq.
Village Attorney

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

SUBJECT: INQ 19-48, Voting Conflicts, Sections 2-11.1(d) & (v), Gulliver Zoning
Variance Matter

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:

Gulliver Schools, Inc. (Gulliver) and Immanuel Presbyterian Church of Miami (Crossbridge) are joint applicants for variances from the Village of Pinecrest's land development regulations. Gulliver and Crossbridge are seeking variances relating to the height of outdoor lights and the percentage of total lot green space. The variances are sought as part of proposed increased lighting for Gulliver's playing fields and pool and other upgrades or modifications to the shared Gulliver and Crossbridge campus.

According to documents generated by Pinecrest relating to the requested variances, Gulliver's Pinecrest campus has hundreds of students enrolled and total attendance at the

school is capped at 938 students. Gulliver self-reports that over sixty percent of its students participate in athletic programs at the school.

The overall population of Pinecrest is estimated to be approximately 20,000.

The requested variances will be considered by the Pinecrest Zoning Board and if approved then by the Village Council. Doug Kraft is a Councilmember and has children that attend Gulliver. Some of his children participate in school athletics. Ethan Shapiro is a board member and has children that will be enrolling in the upcoming academic year.

Neither Councilmember Kraft or Board Member Shapiro live close enough to Gulliver or Crossbridge such that their residences will be impacted by the increased light caused by the proposed heightened lighting fixtures or potential evening traffic caused by an increased number of night sports activities at the pool and playing fields.

Neither Councilmember Kraft or Mr. Shapiro have any financial, employment or legal relationship with Gulliver or Crossbridge beyond the children's attendance or anticipated attendance.

Issues Presented:

Does Councilmember Doug Kraft have a prohibited voting conflict that would prevent him from considering zoning variances requested by Gulliver and Crossbridge?

Does Board Member Shapiro have a prohibited voting conflict that would prevent him from considering zoning variances requested by Gulliver and Crossbridge?

Discussion:

As regards Councilmember Kraft, Section 2-11.1 (d) of the Ethics Code provides that a voting conflict may be created where the voting official has an enumerated employment, legal, or financial relationship with an entity that would be or might be directly or indirectly affected by the action of the voting body. More broadly, even if an enumerated entity relationship does not exist, a prohibited voting conflict may arise if the voting member "might, directly or indirectly, profit or be enhanced by the action of the board.

In the past, the Ethics Commission, particularly in potential voting conflict matters related to zoning decisions, has applied a standard utilized by the Florida Commission on Ethics. This standard has analyzed whether a voting official is uniquely or directly affected by a vote depending on the size of the affected class. For instance, a Key Biscayne Councilperson did not have a prohibited voting conflict because he was one of 1,500 property owners affected (.06%) and therefore his interest did not reach the threshold of 1-2% of the size of the class, a percentage that would generally create a prohibited voting conflict if the voting official's interest exceeded that amount. (*See* RQO 10-20)

Councilmember Kraft does not have an enumerated employment, legal, or financial relationship with Gulliver or Crossbridge. Additionally, Councilmember Kraft does not reside close enough to the Gulliver and Crossbridge campuses to be uniquely impacted by the changes sought by the proposed variances. As such, he is one of the several thousand residents of Pinecrest that would be generally affected by the proposed changes requiring zoning variances.

Even if we considered Councilmember Kraft's interest as the parent of children at Gulliver, once again the voting conflict analysis under, Section 2-11.1 (d) of the Ethics Code, will narrowly focus on whether the voting official might, directly or indirectly, profit or be enhanced by the item in question or, whether some special benefit might flow from the vote to a close family member. The rationale underlying voting conflict opinions involving official's children have likewise focused on the unique impact that the matter under consideration could have on the elected official's family member and the corresponding possible enhancement, direct or indirect, on the voting official.

Thus, no prohibited voting conflict was created by a voting official's consideration of a collective bargaining unit impasse matter even though the official's son was in the impacted bargaining unit because he was one of over two hundred total members. The official's son would not be singularly impacted by the vote. (*See* INQ 19-01)

Councilmember Kraft's children are one or more of several hundred students enrolled at Gulliver and one of a lesser number but yet also several hundred that participate in school athletics. As such, his children would not be singularly impacted by his vote on the proposed variances that result from Gulliver seeking to upgrade athletic facilities on the campus.

For members of advisory or quasi-judicial boards, Section 2-11.1 (v) of the Ethics Codes likewise provides that a voting conflict may be created if the voting member "will be directly affected by the action of the board on which the member serves" *and* if the voting member has a prohibited financial, employment or legal relationship with the entity appearing before the board.

Even if the voting member does not have a prohibited relationship with the entity, if the board member will be uniquely affected by the vote, the Ethics Commission has encouraged the member not to vote on the matter in order to avoid an appearance of impropriety. (*See* RQO 02-58: Even though board member did not have an enumerated relationship with the entity, an appearance of impropriety will arise if member votes on a matter involving a development where the member lives or where a family member owns property.)

Again, it is reported that Board Member Shapiro does not have a prohibited financial, employment or legal relationship with Gulliver or Crossbridge, the entities appearing

before the board. Even if the board member analysis is expanded to include the consideration of a potential appearance of impropriety that might be caused by a unique impact on him, once again, he does not reside close enough to the Gulliver and Crossbridge shared campuses to be impacted by the increased lighting from the proposed heightened lighting fixtures or potential evening traffic caused by an increased number of night sports activities at the pool and fields. Additionally, his children do not yet attend Gulliver.

Conclusion:

The voting conflict prohibition contained in Section 2-11.1 (d) of the Ethics Code does not prohibit Councilmember Kraft from considering or voting on a matter relating to requested zoning variances by Gulliver and Crossbridge.

The voting conflict prohibition contained in Section 2-11.1 (v) of the Ethics Code does not prohibit Board Member Shapiro from considering or voting on a matter relating to requested zoning variances by Gulliver and Crossbridge.

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 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.