




MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Honorable John Dubois
Vice Mayor, Village of Palmetto Bay

FROM: Jose Arrojo, Executive Director
Commission on Ethics 

SUBJECT: INQ 19-57, Voting Conflict, Section 2-11.1(d)
Proposed Zoning Change of the Yacht Club by Luxcom Property

DATE: May 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:

John Dubois (“Dubois”) is the Vice Mayor of the Village of Palmetto Bay (“Village”) and a voting member of the Village Council.

There is a seventy-one (71) acre property located at 6525 Southwest 152nd Street, Palmetto Bay (“the property”) The property was formerly owned by Florida Power and Light and was operated as a power plant by the utility for decades.

Dubois owns a residence and commercial property in the Village. Both are described as being on the “other side of the Village” and of a distance from the property such that these holdings will not be impacted by the development, or at least not in a manner unique from other Village residents.

On or about January 2018, Dubois introduced legislation to change the zoning for the property from “Institutional Use/Interim Use” to “Estate Single Family” which would allow only single-family homes on one acre lots. It is reported by Dubois that the vote of the Village on initial presentation of the legislation was unanimous in support. For reasons that are unclear or irrelevant to this opinion, there was no subsequent consideration of the legislation and the zoning change did not occur.

On or about December 2018, Yacht Club by Luxcom, LLC (“Luxcom”) purchased the property. Luxcom plans to develop the property into what it has described as a “premier hospital campus” that would be inconsistent or prohibited if the property was zoned for large lot, single-family homes.

On or about April 2019, Dubois once again introduced legislation to change the zoning for the property from “Institutional Use/Interim Use” to “Estate Single Family” which would allow only single-family homes on one acre lots. It is once again reported by Dubois that the vote of the Village on this renewed presentation of the legislation was unanimous in support.¹

Jose Luis Castillo (“Castillo”) is a political consultant who has been formally engaged by Dubois in two prior election cycles. He is apparently active in the Village and Dubois represents that he has also served as a political consultant for the other four currently serving members of the Village Council. Dubois reports that Castillo is a “friend” as well as being a former political consultant. Castillo is not currently engaged by Dubois as a political consultant.

Dubois has publicly announced that he is a candidate for the District 8 Commission seat on the Board of County Commissioners. The District 8 County Commission seat should become available in 2020 upon the resignation of the current incumbent who in turn has publicly announced that she will be running for County Mayor.

It is Dubois’ plan to again, at a future date, formally engage Castillo as his political consultant. Although again, at this time, there is no formal engagement or contractual relationship of any kind.

Castillo has been retained Luxcom to lobby against the proposed rezoning of the property.

Dubois has not articulated that he could not be fair in considering, participating in, or voting on the rezoning matter or that he believes he has a conflict.

Issue:

Does a prohibited voting conflict exist that would prevent Vice Mayor Dubois from participating or voting on legislation to change the zoning of the property from “Institutional Use/Interim Use” to “Estate Single Family” because an impacted party, Luxcom, has retained Castillo, Dubois’ former and future political consultant and friend, to lobby in opposition to the zoning change?

¹ There is current litigation between Luxcom and the Village of Palmetto Bay arising out of the contemplated rezoning of the property. That case is styled as *Yacht Club by Luxcom, LLC v. Village of Palmetto Bay*, and is filed and pending in Miami-Dade County Circuit Court.

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 Council. 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.

In past opinions, the Commission on Ethics has concluded that the section actually creates three categories for potential voting conflicts: (1) “automatic conflicts” if the voting member is an officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary of the party affected by the vote; (2) “contingent conflicts” if the voting member is a stockholder, bondholder, debtor or creditor of the affected party and the member would be affected in a unique or distinct manner as compared to the general public; and (3) a “broad prohibited conflict” if the voting member would or might, directly or indirectly, profit or be enhanced by the action of voting body. (See RQO 15-04)

The first part of our analysis pursuant to the Ethics Code and former opinion guidance is straightforward. To restate, the proposed legislation would change the property’s zoning classification and that would prevent Luxcom’s current development plans. Accordingly, it is abundantly clear that it is an entity that would be or might be, directly or indirectly affected by the action of the Council. It is equally clear that Dubois does not have an automatic or contingent voting conflict because he is not an officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, creditor and debtor of Luxcom. Thus, there is no relationship between Dubois and Luxcom that would create a potential voting conflict on the rezoning legislation.

As to whether Dubois has a broad prohibited conflict, we have repeatedly opined 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 Council 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.

Thus, the second part of our analysis considers whether Dubois “would or might, directly or indirectly, profit or be enhanced by the action of the Council in considering or voting on the restrictive zoning change of the property. From Dubois’ own self-description of the location of his properties in the Village it does not appear that he would be uniquely or directly affected by participation or vote on the zoning legislation. (See RQO 10-20) Thus, there is no uniqueness in the impact that Dubois would suffer as compared to other Village residents in his position as a residential and commercial property owner in the Village that would create a potential voting conflict on the rezoning legislation.

Finally, we proceed to consider whether Dubois’ past and future relationship with Castillo would create a voting conflict on the rezoning matter. In prior opinions with somewhat similar fact patterns, we have not only considered the prohibitions of Section 2-11.1(d) but also reviewed and 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)

In those scenarios, we have opined that if a close family member was directly involved or assigned by a firm to lobby or advocate on the specific matter, then both sections, would prevent the elected official’s involvement in the matter. (See also INQ 11-85, INQ 13-211, INQ 19-21)

However, we have not extended the rationale that applies to close family member lobbyists to friends, or former and prospective political consultants engaged in lobbying activities, nor does any provision of the Ethics Code explicitly support that extension. (See INQ 16-242)²

To be clear, the Ethics Code does not apply an “appearance of impropriety” standard on potential voting conflicts for elected officials. It provides the minimum standard of ethical conduct for elected officials.

² In INQ 16-242, we concluded that a County official did not have a prohibited conflict of interest serving on a negotiating committee even though his personal friend was engaged as the lobbyist for the firm transacting with the County because there was no current employment, financial, or business relationship between the County selection committee official and the firm or the lobbyist.

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 rezoning matter relating to the Luxcom property.

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.

