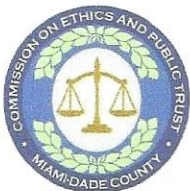


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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October 13, 2020

Via U.S. & Electronic Mail:
ogilbert@miamigardens-fl.gov

Honorable Oliver G. Gilbert III, Esq.
Mayor of Miami Gardens
18605 Northwest 27th Avenue
Miami Gardens, Florida 33056

Re: Ethics Inquiry Request, INQ 2020-103, Miami Gardens Mayor Oliver Gilbert, Voting Conflict, District 1 Commission Offices, Section 2-11.1 (d) of the County Ethics Code

Dear Mayor Gilbert:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of the voting conflict provision of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance ("Ethics Code").

We respond as follows:

Facts:

On September 12, 2018, the Miami Gardens City Council adopted a Resolution, which approved a special exception for a self-storage facility within the Gardens Promenade Shopping Center in the Entertainment Overlay District ("self-storage facility"). As part of the Application, and at the behest of staff, a Declaration of Restrictive Covenants was proffered by the Applicant, which provided, in part, that a dedicated area within the self-storage facility floorplan include "a wine tasting room or other retail space approved by the City."

On September 11, 2020, the City received correspondence from the Applicant, Gardens and 27, LLC or its authorized agent ("Applicant"), requesting a modification to the Declaration of

Restrictions proffered as a part of Resolution 2018-145-3559 to include office uses because the company had difficulty in locating a wine tasting room operator for the self-storage facility. (“modification of restriction”) It should be noted that office uses are permitted as of right in the underlying PCD zoning district.

The Gardens Promenade is centrally located in Miami Gardens and is just south of the Miami Gardens City Hall and Police Station complex. It houses a number of retail businesses and the self-storage facility will have some first-floor space available for offices.

Miami Dade County leases or rents office space for Commissioners in their home districts. The District Commission offices house the Commissioner and members of his or her county employee staff. The Commissioner and his staff provide constituent services for district residents.

Mayor Oliver Gilbert was recently elected to the Miami-Dade County Board of County Commissioners for District 1. Mayor Gilbert has inquired about housing the District 1 Commission office in the self-storage facility in the space designated for a wine tasting room.

Issue:

Whether Oliver Gilbert, the Miami Gardens Mayor/District 1 County Commissioner Elect, has a prohibited voting conflict that would preclude his consideration and vote on the Applicant’s requested modification of restriction, changing a self-storage facility floor plan to allow for office space, when he would like the County to consider leasing or renting the space for the District 1 Commission office.¹

Discussion:

The County Ethics Code is applicable to County and municipal elected and appointed officials, employees, board members, their family members, and certain persons that transact with local government.

As regards Mayor Gilbert’s consideration and vote on the self-storage facility modification of restriction, as a Mayor and voting member of the Miami Gardens Council, he is a covered party under Section 2-11.1 of the Code of Miami-Dade County (“Ethics Code”). Specifically, as a Councilman, he is a covered person pursuant to Section 2-11.1 (b) (1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.²

Because he is a covered party under the Ethics Code, then Section 2-11.1 (d) of the Code likewise applies to him. Section 2-11.1 (d) of the Ethics Code provides that a Commissioner shall not:

¹ Mayor Gilbert has already requested a voting conflict opinion from municipal counsel who has opined that there is no voting conflict under Section 112.3134 (3) (a), Florida Statutes, because the modification of the declaration of restrictions would not inure to the Mayor’s private pecuniary gain.

² The Ethics Code constitutes the minimum standard of ethical conduct and behavior for all municipal officials and officers. *See* Section 2-11.1 (2), Ethics Code.

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Council] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official "would or might, directly or indirectly, profit or be enhanced by the action..." as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, (3)(a) that limits the county or municipal public officer from voting upon any measure "which would inure to his or her special private gain or loss."

In RQO 15-04, the Ethics Commission established a framework for evaluating whether local elected officials have a prohibited voting conflict under Subsection 2-11.1 (d) of the Ethics Code. In that case, the Ethics Commission opined that the voting conflict section creates three separate categories for potential conflicts:

An "automatic prohibited conflict" if the voting member has one of the following relationships with an entity "affected" by the vote before the board: officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; and

A "contingent prohibited conflict" if the voting member has one of the following relationships with an entity "affected" by the vote AND the matter would affect the person in a manner distinct from the manner in which it would affect the public generally: stockholder, bondholder, debtor, or creditor; and

A "broad prohibited conflict" if the voting member "would or might, directly or indirectly, profit or be enhanced by the action" of the board in-question.

In this case, the persons or entities that would be affected by the Council's consideration and vote on the self-storage facility modification of restriction would be the Applicant, Gardens and 27, LLC or its authorized agent. The Applicant would benefit from an affirmative vote of the Council inasmuch as it would be afforded greater flexibility in leasing floor space in the self-storage facility to office lessors or renters in addition to "wine tasting" room operators or other retailers.

Mayor Gilbert does not have any of the enumerated employment, financial, or legal relationships contained in Section 2-11.1 (d) with any of these parties. As such, there is no automatic or prohibited conflict that would prohibit his consideration or vote on the matter.

In considering whether the third or broadest prong of the voting conflict section would apply to the voting member's consideration and vote on the matter, there must be some reasonable probability beyond remote or speculative, that Mayor Gilbert would be enhanced by a measurable financial profit, or some personal, professional, or social enhancement. (See RQO 15-04)

An affirmative vote on the Applicant's modification of restriction would make the self-storage facility space available to office lessors or renters including but not limited to the County. The County could secure the space for District 1 Commission Office. It can be argued that this would confer a benefit on the Mayor inasmuch as the County could secure office space in the self-storage facility for the District 1 Commission Office that would house him and his County staff.

However, the Mayor, in his capacity as the District 1 Commissioner, will not be the renter or lessor of the office space. While it will provide him with a district office, it will also house county employees that will comprise the District 1 staff. The District 1 Commission office will provide constituent services to residents residing in the District. Finally, the office space will be, at the end of the day, first floor space in a self-storage facility located in a commercial shopping center.

A vote on the Applicant's requested modification of restriction to allow for office space in a self-storage facility that may later house the District 1 Commission office, housing county employee staff and providing constituent services, will not result in a measurable financial profit, or some personal, professional or social enhancement to the Mayor that will create a prohibited voting conflict and clearly serves a governmental purpose.

To be clear, the County's 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 a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business. (See generally INQ 13-148 and RQO 12-03)

Conclusion:

Mayor Gilbert does not have any of the enumerated employment, financial, or legal relationships contained in Section 2-11.1 (d) with the Applicant or any persons or entities that may be affected by the Council's action. Because he will not be the lessor or renter of the office space in the self-storage facility and may only be the occupant of the space as the District 1 County Commissioner along with county employee staff, and the space will provide constituent services, then the vote will not result in a measurable financial profit, or some personal, professional or social enhancement to the Mayor that will create a prohibited voting conflict.

We hope that this opinion is of assistance and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,

Jose J. Arrojo /s/

Jose J. Arrojo
Executive Director

cc: Sonja K. Dickens, Esq., Miami Gardens City Attorney
All Commission on Ethics Attorneys

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.