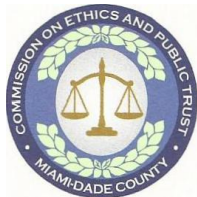


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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October 14, 2020

Via U.S. & Electronic Mail

Victoria Mendez, Esq.  
City Attorney  
Miami Riverside Center  
444 Southwest Second Avenue  
Miami, Florida 33130

Re: Ethics Inquiry Request, INQ 2020-104, Section 2-11.1(m)(1), Prohibited Appearances, Section 2-11.1(g), Exploitation, County Ethics Code, Commissioner Appearing Before a Miami Board or Committee

Dear Ms. Mendez:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance to Commissioners appearing before Miami Boards.

We respond as follows:

#### Facts:

A Miami City Commissioner would like to appear before other Miami Boards or Committees to support or oppose matters on general policy grounds that may be related to, *inter alia*, municipal development, density, or green space. The matters would not pertain to the Commissioner personally and he would not be retained by or speaking on behalf of a third person or entity.

The requesting party, Assistant City Attorney George Wysong of the Miami City Attorney's Office, on behalf of the Miami City Commissioner, inquires as follows:

Issues:

1. Whether a Miami City Commissioner may appear before the Miami City Commission or any other Miami Board, on a matter that pertains to him personally; and
2. Whether a Miami City Commissioner may appear before Miami Boards or Committees on matters that do not pertain to him personally and oppose or support the matters on general policy grounds while not appearing on behalf of a third person or entity, where these matters will later be voted on by the City Commission.

Discussion:

Section 2-11.1(m)(1) of the County Ethics Code, prohibiting certain appearances and payments, and applying to Commissioners, provides in relevant part that a Commissioner may not appear before any city board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. (See RQO 12-13; INQ 14-286)

The Ethics Commission addressed this prohibition in RQO 99-23. That opinion considered whether a County Commissioner could appear before a County board or agency to speak as a citizen and homeowner who would be impacted by a ten-million-dollar improvement to a country club. The Commissioner was a member of the club. In that case, the Ethics Commission opined that the Commissioner could participate in public neighborhood association meetings and other public forums and allow his name to be used in literature regarding the matter. However, he was cautioned that he could “not speak regarding the issue at community council [county board] meetings or other County agency meetings regarding the matter” as this would be prohibited by Section 2-11.1(m)(1).

Contrasting, in INQ 05-98 the Ethics Commission considered whether a County Commissioner could appear before a County Planning Advisory Board (PAB) and address an annexation issue. The PAB recommendation on annexation would later be considered by the BCC on which the Commissioner sat as a member. In that case, the Ethics Commission cautioned that the appearance was not recommended as it would “tend to negate the independence of a County board when the County Commissioner plays a role in helping to formulate a board recommendation.” However, it concluded that the Commissioner’s appearance, in that instance, did not rise to the level of an ethics violation and would be permitted by the Ethics Code.

While appearances by elected officials before a public board may not be *uniformly* violative of Section 2-11.1(m)(1) of the Ethics Code, they clearly implicate the exploitative conduct addressed in Section 2-11.1(g) regarding exploitation of official position. Because of the value of the independent advice of city boards and committees to the decision-making process, commissioners should refrain from using their official position to unduly influence the deliberations or recommendations of their city boards and committees, especially those votes which will ultimately be presented before the city commission for consideration and voting.

The Ethics Commission has cautioned that in those instances where a city commissioner appears before another city board, he or she “ should attempt to make it clear whether they are speaking as an individual public official, or whether they are speaking on behalf of the public board they sit on.” Elected officials should preface their personal remarks at a public meeting by clarifying that “today, I am speaking for myself and not for the entire board.” (See INQ 19-76)

In other words, when presenting individual opinions or positions before city boards, commissioners should explicitly state that they do not represent the collective position of the city commission, nor allow inference that they do. They should also make clear that the city board as an entity, its individual members, and the attending or advising city staff should not in any instance expect a negative impact arising from a vote contrary to that advocated by the elected official.

We note that, in the event a city commissioner appears before a city board to express his personal support or opposition to an item and that item will be voted on in the foreseeable future by his city commission, a city commissioner shall not appear when another city commissioner sits on the city board. Board members and staff should also be cautioned to not act as a communication liaison between the presenting commissioner and other city commissioners as this could constitute a circumvention of the requirements of the Sunshine Law. (See AGO 96-35)

#### Conclusion:

Applying the reasoning of these ethics opinions to the facts presented herein, Section 2-11.1(m)(1) of the Ethics Code would permit the Commissioner to appear before a Miami Board/ Committee, including the Commission on which he sits, on a personal matter not pertaining to a third person or other distinct legal entity.<sup>1</sup>

As a matter of public policy the Ethics Commission cautions against the Commissioner appearing before a Miami board to express his personal support or opposition to an item of public importance. Such an appearance may tend to negate the independence of the city board when the commissioner plays a role in helping to formulate a board recommendation. The presentation may also undermine the impartiality of these boards which have been created to provide independent advice to the city’s legislative body.

More importantly, there is a danger that such a presentation may implicate the exploitative conduct addressed in Section 2-11.1(g), of the County Ethics Code relating to exploitation of official position. Under certain circumstances, the conduct may implicate Florida’s Sunshine law as it applies to public boards and direct or liaison communications between elected officials on the same commission.

With these recommendations and cautions, a city commissioner may express his or her own views on a matter of general public concern from the dais *and* as a presenter before another city board without violating Section 2-11.1(m)(1) of the Ethics Code.

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<sup>1</sup> See INQ 06-99 interpreting subsection (m)(2) and noting that if the applicant is a distinct legal entity apart from the board member (a corporation or professional association) then the prohibition against appearing before the member’s own board applies.

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. Finally, thank you for making Assistant City Attorney George Wysong available to us on this matter. His assistance and insight are always greatly appreciated.

Sincerely,

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Jose Arrojo, Executive Director

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Martha D. Perez, General Counsel

cc: George Wysong, Assistant 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.