



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vivianne Bohorques, COO
The Children's Trust

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-106

DATE: October 15, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a possible voting conflict of interest by a Children's Trust board member on Resolution 2021-15- Early Childhood Development.

Background:

The Children's Trust Board (TCT) is an independent special district established by Miami-Dade County in Art. CIII, Sections 2-1521 through 2-1531 of the Miami-Dade County Code (TCT ordinance).

TCT contracts with various agencies, including Florida International University's Center for Children and Families, which offer full-day summer programs for young children who receive academic school-year services funded through the Individuals with Disabilities Education Act (IDEA), Part B or Part C, or who have developmental delays in areas of speech/language, cognition, physical well-being, social-emotional challenges or behavioral problems.¹

You have advised that Resolution of TCT 2021-15- Early Childhood Development, entitled, "Authorization to negotiate and execute contracts with eight providers, identified herein, to provide early intervention summer camp services for 635 children, birth to five years of age, in a total amount not to exceed \$2,217,499.00 for a term of six months,

¹ In light of the benefits of early intervention services and the risks of summer learning loss, one of TCT's goals is to provide continuity of the beneficial impacts of school year early intervention services through the summer months.

commencing March 1, 2021, and ending August 31, 2021, with two remaining renewals, subject to annual funding appropriations,” will be considered at an upcoming meeting of the TCT board.

You inquire on behalf of TCT board member, Dr. Daniel Bagner, regarding whether he would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2021-15- Early Childhood Development.

You make this inquiry in light of Dr. Bagner’s relationship with Florida International University. Dr. Bagner works for FIU in the Center for Children and Families, and this contract is with FIU-Center for Children and Families.

Analysis

This office may consider and opine on whether a TCT board member has a conflict of interest affecting his or her vote or participation in a funding allocation from TCT. *See* RQO 19-06

TCT’s Conflict of Interest and Code of Ethics Policy states:

(A) board member shall not vote on any matter presented to the CT Board if the member will receive a direct financial benefit from the board action, or, if, pursuant to the State Ethics Code at Section 112.3143, the matter to be voted on would inure to the member’s special gain or loss; or, would inure to the special private gain or loss of any principal by whom the member is retained, a relative or the member’s business associate. *See* III (A)(1) of the Policy.² Additionally, “...*board members ... will avoid an appearance of impropriety.*” *See* III (D) of the Policy

TCT’s Bylaws addresses voting conflicts in matters of funding in Article VI as follows:

1. A Board member, prior to voting on a funding issue that involves any program or agency in which he or she participates as an employee or *member of the governing authority*, shall disclose their interest in said program or agency and file a disclosure statement with the Clerk of the Board. If a member of the Board has declared a conflict of interest, the member shall abstain from speaking or voting on such issue. However, the member does not need to leave the room during the discussion.
2. *Members of the Board shall comply with all state and local laws relating to conflicts of interest.*
3. In accordance with The Children’s Trust’s Conflict of Interest and Code of Ethics Policy, at all times, *Board members will act in such a manner to avoid the appearance of impropriety.* No member shall serve as a staff member of any agency when The Children’s Trust provides more than fifty (50) percent of the agency’s budget, and The Children’s Trust’s funds may pay no portion of a Board member’s salary.

² *See also* TCT Bylaws at Art. VI: Board members will act to avoid the appearance of impropriety.

TCT is also bound by the County Ethics Code (*See* RQO 19-06). Whereas TCT Policy limits a voting conflict of interest to situations where the board member receives a direct financial benefit from the Board action, the Ethics Code at Section 2-11.1(d), establishes a *per se* (automatic) conflict if the board member has a prohibited relationship (*officer*, director, partner, of counsel, consultant, employee, fiduciary, etc.); *or* might, directly or indirectly, profit or be enhanced by the Board action.³ *See* RQO15-04; and INQ 19-16 (concluding that TCT board member whose employer has a business relationship with a TCT proposer has an automatic voting conflict in RFQ because of her consultant status).

In addition, we cannot ignore the heightened appearance of impropriety standard imposed on all TCT board members pursuant to TCT Policy and Bylaws. This heightened appearance of impropriety ethical standard should be enough to avoid participation and/or vote on an item connected to the entity where the board member is employed or serves. *See* INQ 16-273 (finding that the vice-president of the bank where TCT has account may serve on the board but may have a voting conflict in the future regarding issues connected in any way to TCT's relationship with the bank because, even if there is no financial interest on the part of the board member, the existence of a heightened appearance of impropriety ethical standard should suffice); *See also* INQ 15-113 (concluding that a board member of TCT employed or member of an agency receiving funding from TCT must disclose the conflict publicly, file a written disclosure and abstain from speaking on the issue).

Conclusion

Consequently, we recommend that Dr. Bagner refrain from voting or participating in FIU-Center for Children & Families funding matters because he is an employee of FIU-Center for Children & Families and, recusal is in accordance with COE opinions as well as the heightened appearance of impropriety standard in TCT Policy and Bylaws.

This opinion is limited to the facts as you presented them to the COE 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.

³ This section of the County Ethics Code applies to the Mayor and members of the Board of County Commissioners (BCC); however, by implication, members of The Children's Trust board may be included for purpose of analysis because, as an independent special district, the role and authority of TCT members mimics the role of the BCC, as ultimate decision-makers of contracts allocating funds such as the ones described herein.

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.