



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Vivianne Bohorques, COO
The Children's Trust

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-107

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 2021-18-Program and Professional Development.¹

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 issued an Invitation to Negotiate (ITN) #2020-09, to fund innovative projects and test new ideas that could lead to effective and equitable opportunities for vulnerable populations to help children thrive. Two hundred eighty-seven pre-applications were received by TCT's innovation team, of which 59 were invited to submit a full application. Twenty-two applications are being recommended for funding.

You have advised that Resolution of TCT 2021-18-Program and Professional Development, entitled, "Authorization to negotiate and execute contracts with 22 providers, identified herein, and selected following a competitive solicitation for innovative services to pilot or test new ideas or methods that have the potential to advance The Children's Trust's mission, in a total amount not to exceed \$1,645,000.00, for a term

¹ The Innovation Fund allows TCT to invest in innovative projects to test new ideas that address existing community needs through unique approaches that have not been tried before in our community.

of 12 months, commencing January 1, 2021 and ending December 31, 2021,” will be considered at an upcoming meeting of TCT board.

You inquire on behalf of three TCT board members regarding whether they 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 2021-18. You make this inquiry in light of the members’ relationships with various entities that will receive funding through this Resolution:

- 1) Constance Collins is the Executive Director of Sundari Foundation. This funding is to support innovative services for, “Lotus Village Voices”, a program led by Sundari Foundation.
- 2) Dr. Daniel Bagner works for FIU-Center for Children and Families. This funding is to support innovative services for a program led by FIU-Department of Dietetics and Nutrition, which you indicate is a different department.
- 3) Dr. Susan Neimand works for Miami-Dade College-School of Education. This funding is to support innovative services for a program led by MDC-Nutrition programs, as a sub-contractor. However, you have indicated that she is not part of the department that will be receiving the funding.

Analysis

This office may consider and opine on whether a TCT board member has a conflict of interest, pursuant to the County Ethics Code, 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, *inter alia*, that 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. TCT’s Bylaws also provides that, “Board members will act in such a manner to avoid the appearance of impropriety.”

The Ethics Code at Section 2-11.1(d), establishes a voting conflict if:

- 1) The board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote;
- 2) The board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it would affect the public generally; and,
- 3) The board member might, directly or indirectly, profit or be enhanced by the board action.

See RQO15-04.

As noted above, an automatic voting conflict arises under Section (d) of the Ethics Code, when the board member has a prohibited relationship with the entity *affected* by the Resolution.

In this case, TCT board member, Ms. Constance Collins, who also serves as the Executive Director of the Sundari Foundation, has an enumerated relationship with an entity which is affected by the funding subject of this Resolution in that, a portion of the funding will support "Lotus Village Voices", an initiative proposed and led by the Sundari Foundation. Consequently, Ms. Collins would be barred from voting or participating on this matter. *See* INQ 20-50; INQ 17-247.

Regarding the other two TCT members listed in this inquiry, Dr. Bagner and Dr. Neimand, although they have enumerated relationships with entities that may receive funding from this Resolution, FIU and MDC respectively, there is however no unique impact which would create a voting conflict for these two TCT board members as they do not work with the specific departmental entities that will receive funding as a result of this Resolution, nor do they have any supervision or control over employees of the departmental entities that work in the programs funded by this Resolution. Additionally, neither Dr. Bagner nor Dr. Neimand would be affected by this vote in a matter distinct from the public generally. Finally, there are no facts indicating that Dr. Bagner or Dr. Neimand might profit or be enhanced by the board action on this Resolution.

Conclusion

Under the details provided concerning this Resolution authorizing TCT to negotiate and execute contracts with 22 providers, for innovative services to pilot or test new ideas or methods that have the potential to advance The Children's Trust's mission:

We recommend that Ms. Collins refrain from voting or participating in funding matters, direct or indirectly, affecting the Sundari Foundation, for which she serves as Executive Director, because she has an automatic conflict of interest; and, recusal is in accordance with COE opinions as well as the heightened appearance of impropriety standard in TCT Policy and Bylaws.

Regarding Dr. Bagner and Dr. Neimand, it does not appear that they have a voting conflict of interest because although they have enumerated relationships with entities that may receive funding from this Resolution, FIU and MDC respectively, there is however no unique impact which would create a voting conflict for these two TCT board members as they do not work with the specific departmental entities that will receive funding as a result of this Resolution, nor do they have any supervision or control over employees of the departmental entities that work in the programs funded by this Resolution. Additionally, neither Dr. Bagner nor Dr. Neimand would be affected by this vote in a matter distinct from the public generally. Finally, there are no facts indicating that Dr. Bagner or Dr. Neimand might profit or be enhanced by the board action on this Resolution

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.

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.