



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vivianne Bohorques, COO
The Children's Trust

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-108, Voting Conflict, §2-11.1(d)

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 possible voting conflicts of interest by The Children's Trust board members on Resolution 2021-14 - Youth Enrichment Programs.

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).

You have advised that Resolution 2021-14, recommending, "[a]uthorization to negotiate and execute contract renewals with 17 providers, identified herein, to deliver high-quality summer camp services to 1,520 youth, in a total amount not to exceed \$2,597,209.00, each for a term of six 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.

This Resolution seeks contract and funding renewal for 17 providers of summer camps for middle and high school youth (grades 6-12) in inclusive and specialty disability programs. The providers include: Breakthrough Miami Inc., Centro Campesino Farmworkers Center Inc., Fit Kids of America Corp., FIU Board of Trustees College of Engineering and Computing, Honey Shine, Inc., Network for Teaching Entrepreneurship, Inc., Shake-A-Leg Miami, Inc., Teen Up-ward Bound, Inc., the Dave and Mary Alper Jewish Community Center, Inc., the District Board of Trustees of Miami Dade College, FL, the Miami Lighthouse for the Blind & Visually Impaired, Inc., the New Jerusalem Community Development Corporation, Town of Cutler Bay, Trinity Church, Incorporated, University of Miami – Children & Youth Law Clinic Law School, University of Miami – Frost School of Music, and University of Miami – Kinesiology & Sports Sciences.

Programs follow a structured schedule of activities to support social-emotional learning (SEL) along with skills-building in one or more specialized areas, such as arts, STEM (science, technology, engineering, math), civic engagement, sports, entrepreneurship or college readiness. Many programs also include family engagement activities.

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 the TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2021-14. You make this inquiry in light of the contractual relationship formed between TCT and Florida International University (FIU), specifically program provider FIU Board of Trustees, College of Engineering and Computing.

Board member Dr. Daniel Bagner is employed by Florida International University as the Director of the Early Childhood Behavior Lab and Professor of Psychology. Research in the lab is conducted under the auspices of the Center for Children and Families and the Department of Psychology at Florida International University, as well as support from the National Institutes of Health. One of the 17 provider contracts is with the FIU Board of Trustees, College of Engineering and Computing.

Dr. Bagner does not work for this department and the Early Childhood Behavior Lab nor the Department of Psychology are receiving funding from this resolution.

Discussion:

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, in relevant part, that a board member shall not vote on any matter presented to the TCT Board if the member will receive a direct financial benefit from the board action. TCT's Bylaws also provide that, "[b]oard 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."

There are no facts indicating that Dr. Bagner will be receiving a direct financial benefit from the board action, therefore, a conflict analysis under TCT rules is not applicable.

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.¹
See RQO 15-04.

As stated above, an automatic voting conflict arises when a board member has an enumerated relationship with the entity affected by the Resolution. In this instance Dr. Bagner does have an enumerated relationship with FIU but not with the FIU Board of Trustees, College of Engineering and Computing, which is the department receiving the funding. *See* INQ 20-53.

There are no facts indicating that Dr. Bagner may profit or be enhanced by the board action authorizing the contract renewal. *See* INQ 20-46; INQ 20-47; and INQ 20-48.

Opinion:

Under the details provided concerning the Resolution authorizing TCT to negotiate contract renewal and funding for the 17 listed providers, board member Dr. Daniel Bagner does not have an enumerated relationship with provider FIU Board of Trustees College of Engineering and Computing and, therefore, no voting conflict. Dr. Bagner will not profit (directly or indirectly) or be enhanced by this vote nor will a special benefit come to him in his capacity as an employee, officer or member of governmental/non-profit entity which partners with TCT to provide summer camps to the youth. Dr. Bagner's vote and participation with regard to this Resolution would not raise the perception of an appearance of impropriety.

This opinion is limited to the facts as you 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.

¹ 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.