



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: Lizelh Ayala
Candidate for Medley Town Council

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-111, Family members' simultaneous service on the same board and
Sunshine Law

DATE: October 19, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding any prohibition of family members running and/or serving on the same elected body.

Facts: You are a candidate for election to the Council for the Town of Medley, Florida. Your father, Edgar Ayala, is an incumbent Councilman from the Town of Medley and is not currently up for reelection. Mr. Ayala currently serves on the Medley Town Council as Vice-Mayor and has been a member of the Town Council since November 19, 2012. If elected, you would be serving side-by-side on the same elected public body.

The Town of Medley has a council form of government where all legislative powers of the town are vested in the Town Council. *See* Article III, Sections 1 and 2 of the Town of Medley Charter. The Town Council is comprised of a Mayor and four Councilmembers and each has a vote in all matters before the Council. *See* Article III, Section 2 of the Town of Medley Charter.

Further, Article III, Section 7 of the of the Town of Medley Charter, states in relevant part, “[t]he Councilmember receiving the highest number of votes in an election shall be the Vice-Mayor of the town and shall occupy that office until the next election, at which time the Councilmember receiving the highest number of votes in that election shall succeed to the office of Vice-Mayor.”

Therefore, per the Town of Medley Charter, if elected, you and your father will hold equal standing in the Town Council. Your father will not hold a position of authority over you as a councilmember, nor will he have authority over your duties or votes.

Issue: Whether an immediate family member may serve simultaneously for the same elected body.

Analysis and Opinion:

In our review of the Municipal Code of the Town of Medley we were not able to identify any provision in the code that would prohibit simultaneous service of relatives on the Town Council.

Likewise, there is no prohibition in the Miami-Dade County Ethics Code against family members simultaneously serving on the same elected body. Moreover, there is no prohibition in the Sunshine Law against a husband and wife, domestic partners, or family members occupying seats on the same public board. The Office of the Attorney General of the State of Florida has issued an opinion stating that there is no per se violation of Section 286.011, F.S., where a husband and wife are both elected to a town council. *See* AGO 89-06. However, the opinion emphasized that such individuals would remain subject to all requirements of the Sunshine Law.

The Miami-Dade Ethics Commission often trains elected officials as well as County and municipal advisory board members in the requirements of the Sunshine Law. These trainings have usually included an admonition against two board members having private discussions in public places prior to and during public meetings, even when those discussions do not involve matters coming before the board. The purpose of such recommendations is the protection of the public trust, something that this agency is charged with doing. *See* INQ 17-62.

Nonetheless, it must be acknowledged that the simultaneous service of a husband and wife or relatives on such a board is likely to create a questionable appearance that would lead some observers to believe that violations of the Sunshine Law were occurring. Spouses or family members living together and sharing multiple joint activities and responsibilities attendant to the maintenance of a household must, perforce, engage in numerous private conversations out of public view. It would not be unreasonable for citizens of Town of Medley to suspect that during such conversations some references to Town business would inevitably become the subject of some conversations, even if only inadvertently. In instances where two spouses or family members vote together on controversial issues, especially if they were the only board members to take the position in question, such a situation would create serious appearances of impropriety, even if family members had adhered strictly to the letter of the law. *See* INQ 17-62.

Although there is no prohibition in the Miami-Dade County Ethics Code that would prohibit family members from serving on the same board, be mindful of the following provisions:

- 1) The Miami-Dade County Ethics Code at Section 2-11.1(d) is very strict in establishing a conflict of interest for an elected official where that official “would or might, directly or indirectly, profit or be enhanced” by the action of the Board. If one of two family members maintaining a joint household with related expenses and financial obligations were to have a conflict of interest under this section, it is likely that the other family member would have the same conflict of interest. Under such circumstances, both family members would be prohibited from participating in the discussion or voting on the item in question. *See* INQ 17-62.

- 2) The Miami-Dade County Ethics Code at Section 2-11.1(g) prohibits County employees from exploitation of their official position. In this instance, it means that your father may not use his position as Vice-Mayor on the Town Council or Town resources to secure special privileges or exemptions on your behalf or to assist with your campaign. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

Based on the foregoing, while there is no legal prohibition against you and your father occupying seats on the Medley Town Council, such an arrangement should be undertaken with the utmost caution so as not to damage the public trust.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.