



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Honorable Daniella Levine Cava  
County Commissioner for District 8

**FROM:** Jose J. Arrojo  
Executive Director

**SUBJECT:** INQ 2020-122, Sections 2-11.1 (b)(4), Advisory Personnel, Section 2-11.1 (v), Advisory Board Voting Conflicts, and Section 2-11.1 (n), Prohibited Actions – Financial Interests, of the County Ethics Code.

**DATE:** November 8, 2020

**CC:** COE Legal Staff

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Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to members of an ad-hoc Mayoral advisory or transition committee.

Facts:

You are currently the Miami-Dade County Commissioner for District 8 and the Mayor-elect. As the incoming Mayor, you may decide to empanel an ad-hoc Mayoral advisory or transition committee (“the committee”) to assist you and your staff. The members of the committee may include community leaders, subject matter experts, or other persons whose expertise you deem relevant to the County’s needs and your administration. The committee may engage in fact-finding and may provide advice on policy or legislation. It is anticipated that the committee’s existence will be of a limited duration of less than one year.

Issue:

Whether members of an ad-hoc Mayoral advisory or transition committee are advisory personnel as defined in Section 2-11.1 (b)(4) of the County Ethics Code and thus, subject to the voting conflict of interest restrictions contained in Section 2-11.1(v) of the County Ethics Code and the financial interest restrictions contained in Section 2-11.1(n) of the County Ethics Code.

Discussion and Opinion:

The Miami Dade Conflict of Interest and Code of Ethics is applicable to County and municipal officials, officers, autonomous personnel, advisory personnel, and employees as defined therein.<sup>1</sup> For purposes of this opinion, the Ethics Code goes on to define advisory personnel as follows:

Section 2-11.1 (b) (4) - The term “advisory personnel” shall refer to those members of County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners.

As a preliminary matter, the definition of advisory personnel is limited to those members of County advisory boards tasked with recommending legislation or providing advice to the *Board of County Commissioners*. The category of advisory personnel as defined, does not specifically include persons tasked with fact-finding or providing advice to the *Mayor*. Should you task the committee with providing recommended legislation that will be presented to the Board of County Commissioners, then the members might be considered advisory personnel. *See generally* INQ 18-01.

However, in RQO 09-42, the Ethics Commission considered whether the board member financial disclosure provisions contained in Section 2-11.1(i) of the Ethics Code applied to all County boards. In that case, the Ethics Commission opined that task forces or ad hoc committees whose enabling resolutions provide that the boards will sunset in less than one calendar year are not subject to the Ethics Code’s financial disclosure provisions. From that formal ethics opinion, it can be inferred that boards that are intended by resolution to be in existence for less than a calendar year are not advisory boards as defined by the Ethics Code and its members are not subject to the restrictions contained in the Code.

Likewise, in INQ 11-63, the Ethics Commission advised the Town of Surfside that there were no Ethics Code prohibitions on the hiring of an Town ad hoc committee member because the committee was due to sunset within six (6) months and consequently, it was not an advisory board.

Again, in INQ 17-292, the Ethics Commission advised County staff that the financial disclosure provisions contained in subsection (i) of the Ethics Code would only apply to those Miami-Dade Economic Advocacy Trust (MDEAT) boards that operate for a year or longer.

In INQ 18-01, the Ethics Commission considered whether the board voting conflict and financial interest restrictions contained in Sections 2-11.1(v) and (n), respectively, applied to the members of the Mayor’s Urban Expansion Area Task Force (UEATF). That board

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<sup>1</sup> *See* Section 2-11.1 (a), of the County Ethics Code.

was primarily tasked with making recommendations to the Board of County Commissioners regarding changes to the boundaries of the County's urban expansion area. As such, it would at first glance, constitute an advisory board as defined in the County Ethics Code. However, because the UEATF was intended to sunset after seven months, that board's staff coordinator was advised that the Ethics Code's voting conflict and financial interest restrictions did not apply to its members.

Very recently in INQ 20-75, the Ethics Commission considered whether the County Ethics Code applied to the Miami 21 Ad Hoc Task Force. In that case, the Ethics Commission advised the Miami City Attorney that because the Task Force was intended by Resolution to be in existence for only six (6) months, then its members were not subject to the County Ethics Code.

Applying the reasoning underlying these prior ethics opinions regarding the applicability of the County Ethics Code to ad hoc committees or other limited duration boards or task forces that are intended to exist for less than one (1) calendar year, we conclude that members of a Mayoral ad-hoc advisory or transition committee tasked with assisting you and your staff in fact-finding or providing advice on policy or legislation will not be subject to the County Ethics Code if the committee's existence will be of a limited duration of less than one year.

Conversely, if the committee is going to be in existence for a year or more, and will be engaged in providing recommended legislation to be presented to the Board of County Commissioners, then the members may be considered advisory personnel and subject to the Ethics Code.

This does not mean that the members of a limited duration ad hoc committee are not subject to any ethical limitations regarding their professional activities vis-à-vis their committee membership. While the County Ethics Commission is not authorized to interpret the State Ethics Code, the potential application of the State Code merits mention. Committee members could be "public officers" as defined in Section 112.313(1), Florida Statutes. Thus, their membership and conduct as committee members could be restrained by the some of the provisions of the State Ethics Code.

Whether the members of the committee will be public officers, as defined in Section 112.313(1), Florida Statutes, will be dependent on how the committee and its membership is determined and what function they will perform. *See Fla. COE 20-07.*<sup>2</sup>

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<sup>2</sup> Members of a municipal committee tasked with making written recommendations to the City Commission, Mayor, and Manager on revisions to a zoning ordinance, and appointed by City Resolution, once they are appointed, will be public officers, as defined in Section 112.313(1), Florida Statutes. They will occupy offices created by a mechanism of law (a resolution of the City Commission) to perform a function of the City government (reviewing ordinances and proposing government action) in positions that can only be assumed by appointment by the City Commission. Because they are public officers, the

In abundance of caution, once the appointment mechanism, term of duration, and specific tasks assigned to the committee are decided upon, we would encourage further discussion regarding the applicability of the Ethics Code to the committee members. Likewise, if as a matter of policy, you determine that the committee members will have to agree to comply with the Ethics Code provisions as a predicate to membership, as if they were advisory personnel, then further discussion is recommended.

Finally, the committee may be subject to Florida's Sunshine Law, if it is tasked with something beyond information gathering or fact-finding and is given some decision-making authority. Again, that determination requires a fact-specific analysis and the County Ethics Commission, while charged by ordinance with providing training regarding the application of the Sunshine Law to County and city boards, is not authorized to provide opinions regarding the application of the Sunshine Law.

We hope this opinion is of assistance and we remain available to discuss any matters addressed herein. Also, 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.

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members will be subject to the prohibitions found in the State Ethics Code, Chapter 112.313, Florida Statutes.