



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Oliver Gilbert
County Commissioner-Elect for District 1

FROM: Jose J. Arrojo
Executive Director

SUBJECT: INQ 2020-123, Sections 2-11.1 (d) of the County Ethics Code relating to
Voting Conflicts, CARES Act Funding

DATE: November 9, 2020

CC: COE Legal Staff

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 a potential voting conflict of interest relating to CARES Act funding.

Facts:

You are currently the Mayor of Miami Gardens and the Miami-Dade County Commissioner-Elect for District 1. You are an attorney by training and recently accepted a position as Executive Director of St. Thomas University's Center for Pandemic, Disaster, and Quarantine Research ("PDQ"). St. Thomas University is a private, nonprofit Catholic university located in Miami Gardens, Florida.

The PDQ was established in April 2020 in response to the public health emergency caused by COVID-19. The PDQ is designed to track the impact of emerging, expanding, and extended pandemics and disasters on all socio-economic aspects of society.

The CARES Act is a federally funded program that aids state and local governments. Through the Coronavirus Relief Fund the CARES Act provides payments to state and local governments dealing with the impact of the COVID-19 outbreak. The CARES Act funded the Relief Fund with 150 billion dollars.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) made an allocation earlier this year to the County. Thereafter, the Board of County Commissioners awarded three million dollars in Coronavirus Relief Funds to the PDQ.

The Board of County Commissioners (BCC), on which you will sit effective November 17, 2020, may consider and vote on additional CARES Act disbursements to local governments and other entities, perhaps including the PDQ.

Issue:

Whether as the Executive Director of the St. Thomas University PDQ, which has received \$3,000,000 in Coronavirus Relief Funds through the CARES Act, you are prohibited from considering or voting on additional CARES Act disbursements to local governments and other entities, perhaps including the PDQ, under the voting conflict provisions contained in Section 2-11.1(d) of the County Ethics Code.

Discussion and Opinion:

Section 2-11.1(d) of the Ethics Code, prohibits elected officials from voting on or participating in any matter presented, if the official *would or might, directly or indirectly, profit or be enhanced* by the action. This conflict voting prohibition is stricter than the state law standard codified in section 112.3143 (1)(d), Florida Statutes, which provides that “No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss...” (INQ 14-86)

Given the enhanced conflict voting prohibition in the subsection (d) of Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in circumstances where an official would or might, directly or indirectly, profit or be enhanced by a vote. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. Also, an automatic voting conflict arises if the voting member has an enumerated relationship with an entity affected by the vote. (*See generally* RQO 15-04)

Accordingly, the Commission on Ethics has opined that a County Commissioner’s employment with a nonprofit that receives funding from the County as a community-based organization (CBO) created an automatic voting conflict of interest under subsection (d) of the Ethics Code for the voting member on matters before the BCC which directly or indirectly affected the CBO. This is primarily because as a paid employee of the CBO, it was deemed that the member might profit or be enhanced by action of the BCC affecting the CBO. (*See* INQ 18-126; INQ 17-235)

An exception to this rule has been carved out for an elected official voting on an overall budget allocation. In this instance, the voting member that serves in a primary enumerated position with a nonprofit entity, may vote on an overall budget item when the budget

provides funding to entity, if the funding allocation is very minor compared to the overall budget. (RQO 19-04; *See also* INQ 14-212) ¹

Applying the reasoning underlying these decisions to the facts presented here, because you serve as the Executive Director of the PDQ, then you are serve in an enumerated position with that entity under Section 2-11.1(d) of the Ethics Code and you have an automatic voting conflict on any BCC votes that may affect the PDQ. This would include any agenda item relating to Coronavirus Relief Fund or CARES Act funding of *that* entity.

As regards greater or more general votes relating to Coronavirus Relief Fund or CARES Act funding of multiple entities, more akin to an overall budget allocation vote, you are permitted to vote on these agenda items, even if there is funding included for the PDQ, as long it's funding allocation is very minor compared to the overall allocation.

Finally, as regards votes relating to individual Coronavirus Relief Fund or CARES Act funding of individual entities other than the PDQ, because of the attenuated nexus between that matter and your employment with the PDQ, it would not appear that you *would or might, directly or indirectly, profit or be enhanced* by the action. As such, Section 2-11.1(d) would not prohibit your vote on that item. ²

We hope this opinion is of assistance and we remain available to discuss ay 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.

¹ As regards this second exception, if it is feasible and allowable to separate the line item allocation that funds the affected entity so that the elected official can vote on the overall budget item minus that line item, then this would be the preferred and recommended course of action. If it is not feasible or allowable to carve out the allocation that funds the affected entity so that the elected official can vote on the overall budget item minus that line item, and the allocation is only a very minor portion of the overall budget, then the official may vote on the overall budget item. (RQO 19-04)

² We recognize that some might argue that by voting on CARES Act funding of entities other than the PDQ, that this might impact the amount of remaining funds overall, and thus this might somehow affect the PDQ's opportunity to secure additional funding. However, the nexus between these individual votes and the potential to affect the PDQ is simply far too attenuated to conclude that you *would or might, directly or indirectly, profit or be enhanced* by such a vote.

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.