




MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Julianna Strout
North Bay Village Commissioner

FROM: Jose J. Arrojo, Executive Director
Commission on Ethics 

SUBJECT: INQ 20-23, Voting Conflict of Interest § 2-11.1(d); Prior Campaign Contributions

DATE: March 10, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts:

You have advised that on March 12, 2020, the North Bay Village Commission will consider a Resolution settling pending litigation in the matter of *Douglas Hornsby, M.D. V. North Bay Village*, Case No. 2018-2739 CA 01(21), Miami-Dade Circuit Court. The proposed settlement in that case will require, *inter alia*, the Village and its insurance carrier to pay Dr. Hornsby the sum of \$100,000.

Dr. Hornsby was formerly an elected official in North Bay Village.

You have further advised that Dr. Hornsby is your political supporter, donated to your prior political campaign, and may have hosted a fundraiser for you.

Issue:

Does Section 2-11.1 (d) of the County Ethics Code, relating to voting conflict of interests, create a prohibited voting conflict for you on a Resolution to resolve pending litigation, when the plaintiff in the litigation is a political supporter and campaign donor.

Discussion:

As a preliminary matter, the voting conflict section of the County Ethics Code found at Section 2-11.1 (d), is made applicable to individuals falling within Subsection 2-11.1 (b) of the Code. Subsection 2-11.1 (b) (1) includes "members of the Board of County Commissioners."

Section 2-11.1 (a) of the Ethics Code provides that:

This section shall be applicable to all County personnel as defined herein and shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers; [and]

References in the section to County personnel shall therefore be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to.

Since members of the North Bay Village Commission serve in comparable capacities to members of the Miami-Dade County Commission, the provisions of Subsection 2-11.1 (d) of the Ethics Code are also applicable to you.

Section 2-11.1 (d) creates three separate categories for potential voting conflicts: ¹

An *automatic prohibited conflict* if the voting member has one of the following relationships with an entity "affected" by the vote before the board: officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or

A *contingent prohibited conflict* if the voting member has one of the following relationships with an entity "affected" by the vote and the matter would affect the person in a manner distinct from the manner in which it would affect the public generally: stockholder, bondholder, debtor, or creditor; or

A *broad prohibited conflict* if the voting member "would or might, directly or indirectly, profit or be enhanced by the action" of the board in question.

You do not have any enumerated employment or financial relationship with Douglas Hornsby, M.D., and thus neither the automatic or contingent prohibited voting conflict provisions of Section 2-11.1 (d) of the Ethics Code apply to your participation or vote on the Resolution to resolve pending litigation, when the plaintiff in the litigation is a political supporter and campaign donor.

¹ See RQO 15-04.

From the facts provided, it is clear that Dr. Hornsby would or might, directly or indirectly, profit or be enhanced by the action of the North Bay Village Commission regarding the Resolution to settle the above referenced litigation. However, there is no indication that you would likewise directly or indirectly profit or be enhanced by the action of the Village Commission.

The fact that Dr. Hornsby may have engaged in lawful and protected political activities supporting your candidacy or made lawful contributions to your political campaign, absent any other facts, does not create a reasonable possibility that you would or might, directly or indirectly, profit or be enhanced by participating or voting on the Resolution.²

Opinion:

Section 2-11.1 (d) of the County Ethics Code, relating to voting conflict of interests, does not create a prohibited voting conflict for you on a Resolution to resolve pending litigation, when the plaintiff in the litigation is a political supporter or campaign donor.

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.

² See INQ 18-46.