



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Imran Ali, Chief of Staff
The Children's Trust

FROM: Martha D. Perez, General Counsel
Commission on Ethics & Public Trust

SUBJECT: INQ 20- 42 [Voting Conflict, §2-11.1(d)]

DATE: May 11, 2020

CC: COE Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflict of interest by The Children's Trust board member.

Background

Ms. Gilda Ferradaz is employed as the Deputy District Director of the Department of Children and Families (DCF).¹

Ms. Ferradaz is a board member of The Children's Trust Board (TCT), 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). She serves on the board as the DCF Administrator or designee, pursuant to Section 2-1522 of the Miami-Dade County Code.

Ms. Ferradaz is also the Vice Chair of the Early Learning Coalition (ELC). The ELC is a not-for-profit organization dedicated to ensuring high quality early education for children in counties, including Miami-Dade County (and Monroe). Pursuant to Section 1002.83, Fla. Stats., the coalition membership must include a DCF administrator, or his or her designee.²

¹ Per DCF website, Ms. Ferradaz is the Southern Region Managing Director <https://www.myflfamilies.com/newsroom/pressreleases/2014/20140131Gilda%20Ferradaz%20Named%20DCF%20Southern%20Region%20Managing%20Director.shtml>

² Also, per the statute, each member must abstain from voting when a voting conflict exists pursuant to Section 112.3143(3), Fla. Stat., The State Ethics Code. www.elcmdm.org

TCT allocates funding for programs that achieve positive outcomes for children and families in Miami-Dade County, through competitive solicitations processes awarding a variety of grants to agencies proposing high-quality programs.³ These agencies are primarily not-for-profit organizations. The specific allocation of TCT funding for ELC programs is accomplished through Resolutions requesting approval of individual agreements with ELC. You advise that ELC has been allocated approximately \$12 million collectively - a substantial amount of funds.

Your inquiry is two-fold: First, is there a conflict of interest preventing Ms. Ferradaz from participating and/or voting on the allocation of funding for ELC? ; and, secondly, if there is a voting conflict, how should TCT correct past actions where she has voted for ELC funding?

Analysis

This office may consider and opine on whether a TCT board member has a conflict of interest 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:

(A) board member shall not vote on any matter presented to the CT Board if the member will receive a direct financial benefit from the board action, or, if, pursuant to the State Ethics Code at Section 112.3143, the matter to be voted on would inure to the member's special gain or loss; or, would inure to the special private gain or loss of any principal by whom the member is retained, a relative or the member's business associate. *See* III (A)(1) of the Policy. ⁴ Additionally, "...board members ... will avoid an appearance of impropriety." *See* III (D) of the Policy

TCT's Bylaws addresses voting conflicts in matters of funding in Article VI as follows:

1. A Board member, prior to voting on a funding issue that involves any program or agency in which he or she participates as an employee or *member of the governing authority*, shall disclose their interest in said program or agency and file a disclosure statement with the Clerk of the Board. If a member of the Board has declared a conflict of interest, the member shall abstain from speaking or voting on such issue. However, the member does not need to leave the room during the discussion.
2. *Members of the Board shall comply with all state and local laws relating to conflicts of interest.*
3. In accordance with The Children's Trust's Conflict of Interest and Code of Ethics Policy, at all times, *Board 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.

TCT is also bound by the Ethics Code (*See* RQO 19-06). Whereas TCT Policy limits a voting conflict of interest to situations where the board member receives a direct financial benefit from the Board action, the Ethics Code at Section 2-11.1(d), establishes a *per se* automatic conflict if the board member has a prohibited relationship (*officer*, director, partner, of counsel, consultant, employee, fiduciary, etc.). *or* might, directly or indirectly, profit or be enhanced by the Board

³ www.thechildrenstrust.org

⁴ *See also* TCT Bylaws at Art. VI: Board members will act to avoid the appearance of impropriety.

action.⁵ See RQO15-04; INQ 19-16 (concluding that TCT board member whose employer has a business relationship with a TCT proposer has an automatic voting conflict in RFQ because of her consultant status).

In addition, we cannot ignore the heightened appearance of impropriety standard imposed on all TCT board members pursuant to TCT Policy and Bylaws. This heightened appearance of impropriety ethical standard should be enough to avoid participation and/or vote on an item connected to the entity where the board member is employed or serves. See INQ 16-273 (finding that the vice-president of the bank where TCT has account may serve on the board but may have a voting conflict in the future regarding issues connected in any way to TCT's relationship with the bank because, even if there is no financial interest on the part of the board member, the existence of a heightened appearance of impropriety ethical standard should suffice); See also INQ 15-113 (concluding that a board member of TCT employed or member of an agency receiving funding from TCT must disclose the conflict publicly, file a written disclosure and abstain from speaking on the issue).

Recently, in RQO 19-04, the Ethics Commission addressed voting conflicts where an elected official (voting member) also holds a primary enumerated position with an entity being considered for funding by his or her commission (board).⁶ The opinion sets forth a "minor allocation" exception to the voting conflict in Section 2-11.1(d) of the Ethics Code:

Section 2-11.1 (d), the voting conflict section of the County Ethics Code, imposes a *per se* or automatic prohibition on an elected official's vote or participation on a matter if he or she holds a primary enumerated position with an entity that may be directly or indirectly affected by the action of the elected body.

There are two limited exceptions to this bright line rule...

Second, *an elected official that serves in a primary enumerated position with an 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... (However), 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.⁷ See Memorandum re RQO 19-04

The rationale for the opinion had its basis in INQ 14-212. That informal opinion nevertheless recommended that the elected official follow a conservative approach and recuse himself in the

⁵ 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.

⁶ Formal letter of Opinion 19-04 is pending.

⁷ The *per se* or automatic voting prohibition prohibits an elected official from participating in items or discussion regarding funding of the affected entity in other meetings of the elected body, including participation in budget workshops during which the body is specifically addressing funding for the entity.

following instances: when the Resolution allocating the funds *only* affected “his” non-profit organization; or, when the Resolution allocating the funds included allocation to “his” non-profit *and* other similar (non-profit) organizations.

Conclusion

Consequently, we recommend that Ms. Ferradaz refrain from voting or participating in ELC funding matters because she has an automatic conflict of interest as Vice-Chair/officer of ELC; ELC’s funding does not meet the “minor allocation” exception in RQO 19-04; and, recusal is in accordance with COE opinions as well as the heightened appearance of impropriety standard in TCT Policy and Bylaws.

With regard of the effect of the conflict of interest on Ms. Ferradaz’s past participation and/or voting of ELC funding allocations, this office does not opine on past conduct activities. We nevertheless make the following observation: In the absence of RQO 19-06 (conferring Ethics Code applicability to TCT), Ms. Ferradaz’s past actions would appear to have been justified based solely on the language of TCT Conflict of Interest Policy as there is no evidence to suggest that she receives a direct financial benefit from the board action, or, that the funding allocation vote would inure to her special gain or loss.

This opinion is limited to the facts as you presented them to the COE 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.