



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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TO: Vivianne Bohorques, COO  
The Children's Trust

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

SUBJECT: INQ 20- 47 [Voting Conflict, §2-11.1(d)]

DATE: June 1, 2020

CC: COE Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflicts of interest by The Children's Trust board members on Resolution 2020-A.

#### Background:

The Children's Trust Board (TCT) is 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).

You have advised that Resolution of TCT 2020-A, entitled, "Authorization to negotiate and execute a match contract renewal with Miami-Dade County Department of Cultural Affairs, for cultural arts programs in an amount not to exceed \$1,500,000.00, for a term of 12 months, commencing October 1, 2020, and ending September 30, 2021.Cultural Affairs," will be considered at an upcoming meeting of TCT board.

This resolution, *inter alia*, seeks match funding with the County's Department of Cultural Affairs (DOCA) to support non-profit organizations (through a competitive grant process) that provide cultural arts programs for children and families in Miami-Dade County.<sup>1</sup>

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<sup>1</sup> The programs included are: Youth Arts Enrichment Program (YEP), All Kids Included (AKI), and Summer Arts & Science Camps for Kids (SAS-C).

You inquire on behalf of two TCT board members regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2020-A. You make this inquiry in light of the members' relationships with Miami-Dade County:

- 1) Barbara Jordan (hereinafter Commissioner Jordan) is the Miami-Dade County Commissioner for District 1. Miami-Dade County is receiving funding through this Resolution.
- 2) Nelson Hincapié (hereinafter Mr. Hincapié) is the Miami-Dade County Mayor's appointee to The Children's Trust Board. He is also the President and CEO of Voices for Children Foundation, Inc. (Voices), a not-for-profit organization which raises funds to support the Guardian Ad Litem Program and develops innovative strategies and partnerships with persons and organizations to "help break the cycle of abuse, abandonment and neglect" in low-income communities.<sup>2</sup> Voices is not applying for a grant / receiving funding through this Resolution.

Discussion:

This office may consider and opine on whether a TCT board member has a conflict of interest, pursuant to the County Ethics Code, 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, *inter alia*, that 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. TCT's Bylaws also provides that, "Board members will act in such a manner to avoid the appearance of impropriety."

The Ethics Code at Section 2-11.1(d), establishes a voting conflict if:

- 1) The board member has an enumerated relationship (*officer*, director, partner, of counsel, consultant, *employee*, fiduciary, etc.) with *any entity affected by the vote*;
- 2) The board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it would affect the public generally; and,
- 3) The board member might, directly or indirectly, profit or be enhanced by the board action.<sup>3</sup>  
*See* RQO15-04

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<sup>2</sup> [beavoice.org](http://beavoice.org)

<sup>3</sup> 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.

- 1) An automatic voting conflict arises when the board member has a prohibited relationship with the entity *affected* by the Resolution:

Although Commissioner Jordan is an officer/official of Miami-Dade County, she “is not automatically disqualified from participating in an item that would affect the governmental entity [because she would not] personally profit or be enhanced personally in any way in the event that [the] resolution is passed and the program it promotes becomes a reality.” See “Government Agency Employment Relationship Exception” in Memorandum to RQO 19-04, *quoting* INQ 18-68

Mr. Hincapié does not have a prohibited enumerated relationship with Miami-Dade County; therefore, no voting conflict arises under this principle.

- 2) The board members referenced herein would not be affected by this vote in a matter distinct from the public generally.
- 3) Finally, there are no facts indicating that Commissioner Jordan or Mr. Hincapié might profit or be enhanced by the board action authorizing match funding for the County’s DOCA to support non-profit organizations providing arts programs. Mr. Hincapié’s non-profit organization, Voices, will not be applying for a grant resulting from the funding allocated through this Resolution.

Opinion:

Under the details provided concerning this Resolution of TCT authorizing the match funding with the County’s Department of Cultural Affairs (DOCA) to support non-profit organizations (through a competitive grant process) that provide cultural arts programs for children and families in Miami-Dade County, it does not appear that Commissioner Jordan or Mr. Hincapié will profit or be enhanced by this vote nor will a special benefit come to either of them by virtue of their relationships with Miami-Dade County.

Also, the members’ voting and participation would not raise the perception of an appearance of impropriety in this Resolution.

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.