



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: [ethics.miamidade.gov](http://ethics.miamidade.gov)

---

---

### MEMORANDUM

---

---

TO: Vivianne Bohorques, COO  
The Children's Trust

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

SUBJECT: INQ 20- 49 [Voting Conflict, §2-11.1(d)]

DATE: June 1, 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

Mr. Reyes 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). He serves on the board as the member-at-large, pursuant to Section 2-1522 of the Miami-Dade County Code.

Mr. Javier Reyes is a cousin of José Dans, owner of WOW Factor Marketing Group (WOW), a TCT vendor in Resolution 2020-E.<sup>1</sup>

Resolution 2020-E entitled, "Authorization to negotiate and execute contract renewals with the three agencies, identified herein, for advertising creative, media buying, and community outreach services, in a combined total amount not to exceed \$1,970,000.00, for a term of 12 months,

---

<sup>1</sup> WOW is a media advertising marketing company which, for purposes of the referenced Resolution, purchases discounted media buys with television and radio broadcasting stations, print, digital and/or outdoor media. The media buys include: (1) obtaining and analyzing data and research to develop a comprehensive media plan best suited to successfully deliver messages for the programs and initiatives being promoted; (2) negotiating best rates and additional benefits on multiple media platforms, such as no-cost tv/radio spots, print/digital ads and/or additional outdoor media spaces; (3) paying media; and, (4) reconciling monthly/annual buys by analyzing results on a case-by-case basis for WOW to determine if goals were achieved and contractual obligations met, while obtaining "added value" benefits including additional advertising given at no cost.

commencing October 1, 2020, and ending on September 30, 2021, with three remaining 12-month renewals subject to annual funding appropriations,” will be considered at an upcoming meeting of TCT board. WOW is one of the three agencies receiving funds through this Resolution.<sup>2</sup>

### 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 prohibits a board member from voting if he or she will receive a direct financial benefit from the board action or if the vote would be contrary to the Florida Ethics Code at Section 112.3143 (Section III (A)(1) of the Policy). Additionally, “...*board members ... will avoid an appearance of impropriety.*” (Section III (D) of the Policy)<sup>3</sup>

TCT is also bound by the Ethics Code (*See* RQO 19-06). The Ethics Code at Section 2-11.1(d), establishes a voting conflict if: The board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote; 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; or, the board member might, directly or indirectly, profit or be enhanced by the board action.<sup>4</sup> *See* RQO15-04

There is no prohibited relationship implicated herein. Also, there is nothing presented in the facts that would suggest that Mr. Reyes might profit or be enhanced by the board action.

However, it is quite possible that this familial relationship may implicate Section 2-11.1(g) of the County Ethics Code (Exploitation of official position). This section provides that a board member may not use his official position to secure special privileges or exemptions for himself *or others*.

While there is no evidence to suggest that Mr. Reyes would use his position with the TCT to secure approval of this Resolution, this provision, along with the heightened “appearance of impropriety” ethical standard in TCT Policy, should be enough to avoid participation and/or vote on this item. *See* INQ 16-273; INQ 15-113

---

<sup>2</sup> WOW’s funding not to exceed \$1,250,000.00.

<sup>3</sup> *See also* TCT Bylaws at Art. VI: Board members will act to avoid the appearance of impropriety.

<sup>4</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.

## Conclusion

Consequently, while there is no voting conflict *per se* under Section 2-11.1 (d) of the County Ethics Code, in order to avoid a perceived exploitation of official position or an appearance of impropriety, we recommend that Mr. Reyes refrain from voting or participating in Resolution 2020-E, authorizing a contract renewal with this recommendation is made pursuant to the standard set forth in TCT's Policy and Bylaws. *See* INQ 17-214, INQ 16-76<sup>5</sup>

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.

---

<sup>5</sup> Additionally, the provisions of the County Ethics Code that generally prohibit a family member from doing business with the agency do not apply to the facts presented because cousin does not fall within the County's definition of "immediate family member." Sections 2-11.1(b)(9), (c), (d), (n)