



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vivianne Bohorques, COO
The Children's Trust

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

SUBJECT: INQ 20- 50 [Voting Conflict, §2-11.1(d)]

DATE: June 2, 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

Resolution 2020-E entitled, "Authorization to negotiate and execute a match contract with Key Biscayne Community Foundation (KBCF), to support the Evidence2Success initiative, in a total amount not to exceed \$50,000.00, for a term of 12 months, commencing October 1, 2020, and ending September 30, 2021," will be considered at an upcoming meeting of TCT board.¹

Dr. Dorothy Bendross-Mindingall is a Miami-Dade County Public Schools board member who serves on the board 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 member of the School Board of Miami-Dade County as appointed by the Chair of the School Board, pursuant to Section 2-1522 of the Miami-Dade County Code.

¹ Evidence2Success initiative is partially funded by Annie Casey Foundation. This initiative focuses on improving the well-being and development of children and youth through an evidence-based approach convening local agencies and organizations to determine the programs and once, identifies, the agencies best suited for their implementation. www.miamitimesonline.com (5/30/2018); TCT Cttee. Meeting (10/10/2019)

Dr. Bendross-Mindingall also serves as a member of the Board of Directors of Miami Children’s Initiative (MCI), a not-for-profit organization focused on transforming Liberty City into a prosperous community, by investing in the children while addressing other needs of the community.² MCI will be receiving funding from this Resolution in its “subcontractor” capacity *as the lead agency of this initiative.*³

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)⁴ This high ethical standard goes beyond the standard of ethics to which public servants are generally held and is higher than any ethical standard applicable to the County Commission. It is intended to guard against damaging public trust in an institution based not on a legal conflict of interest, but on any action that might reasonably appear to be a conflict or other ethical problem. *See* INQ 18-40 (issued to TCT)

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:

- 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;
or,
- 3) The board member might, directly or indirectly, profit or be enhanced by the board action.⁵
See RQO15-04

² *See* www.miamichildrensinitiative.com

³ MCI is the agency leading the effort behind this initiative. KBCF is the fiscal agent, providing \$50,000.00 in in-kind services. *See* Resolution.

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

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.

Our analysis is triggered by the first voting conflict scenario under Section 2-11.1(d): an automatic voting conflict.⁶ 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).⁷ The opinion sets forth a “minor allocation” exception to the voting conflict in Section 2-11.1(d) of the Ethics Code: “*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 [the]entity, if the funding allocation is very minor compared to the overall budget...*” However, this Resolution is not part of an overall budget item as contemplated by this exception.⁸ See Memorandum re RQO 19-04

As member of MCI’s Board of Directors, Dr. Bendross-Mindingall has an enumerated relationship with an entity (MCI) which is affected by the funding subject of this Resolution in that, the funding is to support Evidence2Success, an initiative *led by MCI*.

An automatic voting conflict exists where the board member is an officer of an entity that is affected, *directly or indirectly*, by the vote. See INQ 17-247; INQ 13-165; INQ 04-131 (*citing to relevant para. in RQO 03-06*)

Hence, this office recommends that TCT board members follow a conservative approach and recuse themselves in instances where the Resolution allocating funding directly or indirectly affects the non-profit entity which they are members of. See INQ 14-212

Conclusion

Consequently, we recommend that Dr. Bendross-Mindingall refrain from voting or participating in funding matters *directly or indirectly* affecting MCI where she serves as a board member because she has an automatic conflict of interest as Board Member of MCI, an entity affected by the vote; MCI’s indirect 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.

Conclusion

While there is no evidence to suggest that Dr. Bendross-Mindingall would use her 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

⁶ Pursuant to the facts provided herein, Dr. Bendross-Mindingall does not have a voting conflict under the second and third scenarios. She has no personal or financial stake in this initiative that would cause her to personally benefit or be enhanced by the board’s action on this Resolution.

⁷ Formal letter of Opinion 19-04 is pending.

⁸ 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.

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.