



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

MEMORANDUM

TO: Vivianne Bohorques, COO
The Children's Trust

FROM: Gilma Diaz-Greco
Staff Attorney

SUBJECT: INQ 20-53, Voting Conflict, §2-11.1(d)

DATE: June 3, 2020

CC: COE Staff

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-H.

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-H, recommending, "Authorization to negotiate and execute a contract renewal with The United Way of Miami-Dade County, Inc., for match funding for the Community Based Care Alliance of Miami-Dade County (CBC Alliance), in a total amount not to exceed \$64,000.00, 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.

This Resolution seeks funding for operating costs and one Director staff position for the CBC Alliance.¹ Funding for the CBC Alliance Director position and operating costs allows the CBC

¹ The CBC Alliance was established under section 20.19(6), Florida Statutes, to carry out the mission of providing a local community presence to guide the development of community-based care for child welfare in Miami-Dade County. While the CBC Alliance is statutorily created, it has always been the responsibility of local stakeholders and the board of directors established in accordance with Florida Statutes to make it a functional body that promotes the interests of children and families associated with the child welfare system.

Alliance board and its subcommittee workgroups to function adequately to advocate, monitor, evaluate, and propose improvements to the child welfare system. Recommendations by the CBC Alliance help to improve the well-being of children in the foster care system and promote the integration of foster care with other social services programs, including The Children’s Trust’s direct services programs. The United Way acts as the fiscal agent which would receive the funds allocated under Resolution H for the CBC Alliance.

You inquire on behalf of several TCT board members listed below regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or the TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2020-H. You make this inquiry in light of the partnership formed between the members’ entities (including TCT) and the CBC Alliance.

- 1) Mary Donworth is employed by the United Way as a Senior Vice-president for Community Impact. The United Way is the Fiscal Agent of the CBC Alliance and in this role serves a pass-through agency to distribute funds to CBC alliance.
- 2) Nelson 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) and serves on the CBC Alliance Board representing Voices.² Miami-Dade County is receiving funding through this resolution.
- 3) Barbara Jordan is the Miami-Dade County Commissioner for District 1. Miami-Dade County has a representative on the CBC Alliance board Morris Copeland. Morris Copeland is the Director of the Juvenile Services Department at Miami-Dade County. He does not report to Commissioner Jordan and Miami-Dade County is not receiving funding through this resolution.

The CBC Alliance is composed, by law, of mandatory representatives, and includes several members through expansion, so that at any given time the body consists of more than 20 participating members. The Children’s Trust is a mandatory representative to the CBC Alliance, as the children’s services council representative.

The mission of the CBC Alliance is to engage the community in advocating for a family-centered, culturally competent and outcomes-driven system of care that enhances the safety, permanency, and well-being of children and families. The CBC Alliance focuses on:

- redesigning the system of care for children in or diverted from the juvenile dependency system;
- serving as the lead advocate for implementation of research-based best practices for the provision of services to dependent and other children associated with the child welfare system, including the advent of “structured decision-making” in the child welfare system;
- advocating for additional funding for traditionally state-operated social services components; and
- maintaining an open community forum for addressing the challenges associated with the community-based system of care for dependent children and for continuing improvement of the system.

² Voices for Children Foundation, Inc. is 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.

- 4) Gilda Ferradaz works for the Department of Children and Families (DCF) and also serves on the CBC Alliance board representing DCF. DCF is not receiving funding through this resolution.
- 5) Magaly Abrahante is an employee of Miami-Dade County Public Schools (M-DCPS). M-DCPS has two employees who serve on the CBC Alliance board, Sylvia Godoy and Mark Zaher, neither of whom report to Ms. Abrahante. M-DCPS is not receiving funding through this resolution.
- 6) Tiombe Bisa Kendrick-Dunn is employed by M-DCPS as a school psychologist and is the Chairperson for Professional Growth & Development at M-DCPS. M-DCPS has two employees who serve as representatives on the CBC Alliance board, Sylvia Godoy and Mark Zaher, neither of whom report to Ms. Kendrick-Dunn. M-DCPS is not receiving funding through this resolution.
- 7) Richard Dunn works for M-DCPS. M-DCPS has two employees who serve as representatives on the CBC Alliance board, Sylvia Godoy and Mark Zaher, neither of whom report to Mr. Dunn. M-DCPS is not receiving funding through this resolution.
- 8) Dr. Dorothy Bendross-Mindingall is a M-DCPS Board member. M-DCPS has employees who serve as representatives on the CBC Alliance board, Sylvia Godoy and Mark Zaher, neither of whom report to ~~Mr. Dunn~~ Dr. Bendross-Mindingall. M-DCPS is not receiving funding through this resolution.
- 9) Daniel Bagner works for Florida International University (FIU). FIU employee, Natalia Giordanois a Clinical Instructor in FIU's School of Social work serves as a representative on the CBC Alliance Board and does not report to Mr. Bagner. FIU is not receiving funding through this resolution.
- 10) Karen Weller works for the Florida Department of Health. Another employee of the Department of Health serves as a representative on the CBC Alliance board but does not report to Ms. Weller. The Department of Health is not receiving funding through this resolution.
- 11) Orlando Prescott is an 11th Circuit Court Judge. The 11th Circuit Court has two representatives on the CBC Alliance board Jeri Cohen, a Judge for the 11th Circuit, and Jessica Allen, a Circuit Director for the 11th Circuit. Neither of them reports to Judge Prescott. The 11th Circuit Court is not 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, in relevant part, that a board member shall not vote on any matter presented to the TCT Board if the member will receive a *direct* financial benefit from the board action. TCT's Bylaws also provide that, "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".

There are no facts indicating that any of the board members will be receiving a direct financial benefit from the board action, therefore, a conflict analysis under TCT rules is not applicable.

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.³
See RQO15-04

As stated above, an automatic voting conflict arises when the board member has an enumerated relationship with the entity *affected* by the Resolution. In this instance several TCT Board members have enumerated relationships with the United Way, or the CBC Alliance. Mary Donsworth is an employee of the United Way, which will receive the funds allocated to CBC alliance under Resolution H. Consequently, the United Way would be an entity affected by the allocation of funds under Resolution H, and Ms. Donsworth would be barred from voting on this matter. *See INQ 20-50 and INQ 20-51.*

Nelson Hincapié and Gilda Ferradaz have enumerated relationships because they serve on the CBC Alliance board, the entity which will be affected by the vote on Resolution H. Consequently, they should also recuse themselves from the vote on the Resolution which will provide funding to CBC Alliance. *See INQ 20-50 and INQ 20-51.*

The other TCT members listed in this inquiry do not have prohibited relationship with CBC Alliance nor any supervision or control over employees of their respective entities which serve on the CBC Alliance board and would therefore have no voting conflicts. None of the board members referenced herein would be affected by this vote in a matter distinct from the public generally. Finally, there are no facts indicating that any of the board members referenced herein might profit or be enhanced by the board action authorizing CBC alliance staff. *See INQ 20-46; INQ 20-47; and INQ 20-48.*

³ 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.

Opinion:

Under the details provided concerning the Resolution authorizing TCT to negotiate and execute a contract renewal with The United Way for match funding for the CBC Alliance, Board Members Mary Donsworth, Nelson Hincapié, and Gilda Ferradaz each have an enumerated relationship with the entities *affected* by the Resolution. Therefore, these Board Members have a voting conflict under Section 2-11.1(d) of the Code of Ethics.

With respect to the remaining Board Members referenced herein, it does not appear that they have a voting conflict. None of the Board Members have an enumerated relationship with the entities affected by the Resolution. None of the remaining Board Members will profit (directly or indirectly) or be enhanced by this vote nor will a special benefit come to any of them in their capacities as employees, officers or members of governmental/non-profit entities which partner with the vendor for the provision of services under a consortium relationship. The remaining Members' voting and participation with regard to this Resolution would not raise the perception of an appearance of impropriety.

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.