



## 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:** Radia Turay, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 20-62

**DATE:** June 25, 2020

**CC:** All COE Legal 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-XX.

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-XX, entitled, "Authorization to negotiate and execute contracts with the Miami-Dade Family Learning Partnership, Inc. and All in One Mail Shop, Inc. d/b/a All in One Direct Marketing Solutions for the support and maintenance of a birth to five book club, in a total amount not to exceed \$1,387,892.00, for a term of 12 months, commencing October 1, 2020, and ending September 30, 2021, with three remaining 12-month renewals, subject to annual funding appropriations," will be considered at an upcoming meeting of TCT board.

The resolution seeks to fund one or more vendors for the support and maintenance of The Children's Trust book club.

The Children's Trust book club provides free, monthly age-appropriate books and supporting materials for all children age from birth to five years old in Miami-Dade

County. The book club aims to reach 60 percent of eligible children within five years, contingent upon necessary funding.<sup>1</sup>

During contract year 2019-2020, a comprehensive technology system was built that will support the ongoing operation, management, and program evaluation of the book club. Six months of content guides were created and an overall marketing campaign with associated marketing collaterals were completed. Numerous early childhood organizations collaborated and supported these efforts in the past year, as part of The Children's Trust Book Club Community Advisory Committee.

The two agencies that will receive funding through this Resolution are, Miami-Dade Family Learning Partnership, Inc. (MDFLP), and All in One Mail Shop, Inc. d/b/a All in One Direct Marketing Solutions (AOMS). Specifically, MDFLP's funding will support the book club's content development/book buying implementation component, and AOMS will support the book club's professional fulfillment services implementation component.

The following organizations are members of The Children's Trust Book Club Community Advisory Committee and will receive payment, from MDFLP through this resolution, for content development services for each content guide: Miami-Dade County Public Schools, Florida International University, Dr. Melissa Baralt, Dr. Marisel Elias Miranda, Maggie Casero, Agencia Central, and AF Designs, LLC.

You inquire on behalf of several 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-XX.

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<sup>1</sup> The Children's Trust Book Club includes four implementation components, which include the following key services:

- 1) Content Development and Book Buying – Selection of developmentally-appropriate books for young children, creation of culturally-relevant content and activities to accompany the books, inclusive of content for children with disabilities, development of digital content, activities that support early literacy, math and social-emotional skills, and procurement of books.
- 2) Professional Fulfillment Services – Packaging and monthly mailing of the books and accompanying materials.
- 3) Marketing – Creating specialized marketing campaigns for recruitment partners, overall marketing campaign and creating marketing collaterals. This is approved under a separate resolution for marketing services.
- 4) Ongoing Operations - Project and vendor management, relationship building to coordinate outreach and enrollment with other early childhood organizations and the community, customer service, and day-to-day oversight. These tasks are carried out by a dedicated Children's Trust staff member. The book club's existing software management solution has been redesigned and upgraded to automate most of the previously manual tasks for managing the expanded book club

You make this inquiry in light of the fact that some of the TCT's board members organizations were members of The Children's Trust Book Club Community Advisory Committee and/or may receive payment for content development services, through the funding allocated to MDFLP:

- 1) Pamela Hollingsworth works for the Early Learning Coalition (ELC). The ELC is a member of the advisory committee and is represented by Jackye Russell. Jackye Russell does not report to Pamela Hollingsworth. The ELC is not receiving funding through this resolution.
- 2) Magaly Abrahante works for Miami-Dade County Public Schools (M-DCPS). M-DCPS' Office of Early Childhood Programs is a member of the advisory committee and is represented by Marisol Diaz and Judy Palenzuela. Both report to Magaly Abrahante. Additionally, M-DCPS' Office of Early Childhood Programs receives payment from Miami-Dade Family Learning Partnership for content development through this resolution.
- 3) Tiombe Bisa Kendrick-Dunn works for Miami-Dade County Public Schools (M-DCPS). M-DCPS' Office of Early Childhood Programs is a member of the advisory committee and is represented by Marisol Diaz and Judy Palenzuela. Neither report to Tiombe Bisa Kendrick-Dunn. Additionally, M-DCPS' Office of Early Childhood Programs receives payment from Miami-Dade Family Learning Partnership for content development through this resolution.
- 4) Richard Dunn works for Miami-Dade County Public Schools (M-DCPS). M-DCPS' Office of Early Childhood Programs is a member of the advisory committee and is represented by Marisol Diaz and Judy Palenzuela. Neither report to Richard Dunn. Additionally, M-DCPS' Office of Early Childhood Programs receives payment from Miami-Dade Family Learning Partnership for content development through this resolution.
- 5) Dorothy Bendross-Mindingall is a Miami-Dade County Public Schools (M-DCPS) board member. M-DCPS' Office of Early Childhood Programs is a member of the advisory committee and is represented by Marisol Diaz and Judy Palenzuela. Neither report to Dorothy Bendross-Mindingall. Additionally, M-DCPS' Office of Early Childhood Programs receives payment from Miami-Dade Family Learning Partnership for content development through this resolution.
- 6) Barbara Jordan is a Miami-Dade County Commissioner. Miami-Dade County's Head Start/Early Head Start is a member of the advisory board and is represented by Maite Reistra-Quintera and Michelle Toral. Neither report to Barbara Jordan. Miami-Dade County is not receiving funding through this resolution.

- 7) Susan Neimand works for Miami Dade College. Miami Dade College Book Fair is a member of the advisory board and is represented by Lisete Mendez. Lisete Mendez does not report to Susan Neimand. Miami Dade College is not receiving funding through this resolution.
- 8) Dan Bagner works for FIU. FIU is a member of the advisory committee and is represented by Dan Bagner, Shayle Griffith, and Melissa Baralt. Dan Bagner provides in-kind services for content development and Melissa Baralt receives payment from Miami-Dade Family Learning Partnership as a consultant for content development.
- 9) Karen Weller works for the FL Department of Health. The FL Department of Health has participated in the advisory committee and Karen Weller has attended the meetings.

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. 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.<sup>2</sup>

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. *See* RQO15-04.

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<sup>2</sup> The facts presented indicate that TCT board member Dan Bagner provides *in-kind* services for content development to the book club. We have confirmed that Mr. Bagner receives no payment for the services he provides to the book club.

As noted above, an automatic voting conflict arises under Section (d) of the Ethics Code, when the board member has a prohibited relationship with the entity *affected* by the Resolution:

It is noted that, none of the board members work for MDFLP or AOMS and none serve on MDFLP or AOMS' board of directors.

Unlike the usual factual pattern where a board member is employed or serves in the entity seeking the funding, in this instance, several of the TCT board members are either employees or officers of a governmental entity which is *affected* by the funding subject of this Resolution.

Specifically, TCT board member Dan Bagner provided *in-kind* services and serves as one of FIU's representatives on The Children's Trust Book Club Advisory Committee, which collaboratively created/developed six months of content guides for the book club. As FIU's representative on the Advisory Committee, Mr. Bagner arguably has an enumerated relationship with an entity affected, *directly or indirectly*, by part of the funding subject of this Resolution in that, the funding to MDFLP will support the Book Club's content development implementation component, which was collaboratively created by The Children's Trust Book Club Community Advisory Committee- on which Mr. Bagner serves. Consequently, we recommend that Mr. Bagner recuse himself from the vote on this resolution.

As to TCT board members- Magaly Abrahante, Tiombe Bisa Kendrick-Dunn, Richard Dunn, Dorothy Bendross-Mindingall- they are employees or officers of M-DCPS. M-DCPS' Office of Early Childhood Programs receives payment from MDFLP- one of the recipients and beneficiary of the funds- for content development through this resolution.

However, even though Tiombe Bisa Kendrick-Dunn, Richard Dunn, Dorothy Bendross-Mindingall, are employees or officers of M-DCPS, which will receive payment from MDFLP through this resolution, they are "**not** automatically disqualified from participating in an item that would affect the governmental entity [because they 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 INQ 20-47, quoting "Government Agency Employment Relationship Exception" in Memorandum to RQO 19-04, and INQ 18-68. It also does not appear that any special benefit will come to them by virtue of their relationship with M-DCPS.

Regarding Ms. Magaly Abrahante, she is an assistant superintendent for M-DCPS. M-DCPS' Office of Early Childhood Programs is a member of The Children's Trust Book Club Community Advisory Committee and is represented by Marisol Diaz and Judy

Palenzuela. Both of these individuals report directly to Ms. Abrahante. Consequently, even though Ms. Abrahante is technically an employee of a government agency and may arguably fall within the government agency employment relationship exception, we recommend that she follow a conservative approach and recuse herself in this instance as she exercises supervision and control over the two employees who represent M-DCPS' Office of Early Childhood Programs on The Children's Trust Book Club Community Advisory Committee, and M-DCPS' Office of Early Childhood Programs will receive payment from MDFLP for the content development services that was provided, through this Resolution.

As to the rest of the TCT Board members listed in this inquiry, Pamela Hollingsworth, Commissioner Jordan, Susan Neimand, and Karen Weller: they are employees, officers or members of governmental entities and/or non-profit entities which collaborated with MDFLP, as part of The Children's Trust Book Club Community Advisory Committee. Although these board members have enumerated relationships with MDFLP's government partners which may benefit from the continuous agreement to provide content development services to the TCT Book Club, there is no unique impact which would create a voting conflict for those members who are employees or officers of government entities. *See* Memorandum to RQO 19-04; and INQ 20-46. Likewise, there is no funding being provided to the government entities and/or non-profit entities of which some of these members hold official positions; and none of these board members exercise any supervision or control over employees of their respective entities which serve on The Children's Trust Book Club Community Advisory Committee.<sup>3</sup>

Additionally, 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 the negotiation and execution of contracts with MDFLP and AOMS for the support and maintenance of a birth to five book club

Opinion:

Under the details provided concerning this Resolution authorizing the CT to negotiate and execute contracts with the Miami-Dade Family Learning Partnership, Inc. and All in One Mail Shop, Inc. d/b/a All in One Direct Marketing Solutions for the support and maintenance of a birth to five book club:

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<sup>3</sup> It is noted that Karen Weller *attended* The Children's Trust Book Club Community Advisory Committee meetings. This fact without more, would not create a voting conflict for Ms. Weller. *See* INQ 13-151 (Members of a Town Commission may attend a public meeting of an advisory board [selection committee], as long as the meeting was a properly noticed public meeting, the members could attend.)

Firstly, we recommend that Mr. Bagner refrain from voting or participating in funding matters, *directly or indirectly*, affecting The Children’s Book Club Community Advisory Committee, on which he serves as one of FIU’s representatives and provides *in-kind* services, because he arguably has an automatic conflict of interest.

Secondly, we recommend that Ms. Abrahante follow a conservative approach and recuse herself in this instance as she exercises supervision and control over the two employees who represent M-DCPS’ Office of Early Childhood Programs on The Children’s Trust Book Club Community Advisory Committee, and M-DCPS’ Office of Early Childhood Programs will receive payment from MDFLP through this resolution.

Thirdly, with respect to Tiombe Bisa Kendrick-Dunn, Richard Dunn, Dorothy Bendross-Mindingall, it does not appear that they have a voting conflict. Even though they are employees or officers of M-DCPS, which will receive payment from MDFLP through this resolution, they are “**not** automatically disqualified from participating in an item that would affect the governmental entity [because they 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 INQ 20-47, quoting “Government Agency Employment Relationship Exception” in Memorandum to RQO 19-04, and INQ 18-68. It also does not appear that they will profit or be enhanced by this vote nor will a special benefit come to them by virtue of their relationship with M-DCPS.

Lastly, with respect to the remaining board members referenced herein-Pamela Hollingsworth, Commissioner Jordan, Susan Neimand, and Karen Weller- it does not appear that they have a voting conflict of interest. None of these remaining board members have any enumerated relationship with the entities affected by the Resolution. They will not 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 government/non-profit entities which partner with MDFLP, under the collaborative relationship fostered through The Children’s Trust Book Club Community Advisory Committee. Their voting and participation with regard to this resolution would also 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.