

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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July 17, 2020

Via U.S. & Electronic Mail:
dsamaria@biscayneparkfl.gov

Honorable Dan Samaria
Commissioner for the Village of Biscayne Park
600 Northeast 14th Street
Biscayne Park, Florida 33161

Re: Ethics Inquiry Request, INQ 20-68, Voting Conflict, Section 2-11.1 (d)

Dear Commissioner Samaria:

Thank you for contacting the Miami Dade Commission on Ethics and Public Trust and requesting guidance regarding a potential voting conflict on several matters due for consideration and vote by the Biscayne Park Village Commission. You have been very forthcoming in your conversations with me and I appreciate your openness and candor.

Facts:

You have filed a civil action against the Village, its former Mayor, Manager, and City Attorney. You are due to consider and vote on matters coming before the Village Commission relating to the hiring of the new Village Attorney and Village Manager. You will also consider and vote upon the annual Village budget.

Issue:

Whether your civil action against the Village, its former Mayor, Manager and City Attorney creates a voting conflict, under Section 2-11.1 (d) of the Ethics Code, prohibiting your participation and vote on the selection of a new Village Attorney and Village Manager, and the annual Village budget.

Discussion:

As a Village Commissioner, you are a covered party under Section 2-11.1 of the Code of Miami-Dade County (“Ethics Code”). Specifically, as a Commissioner you are a covered person pursuant to Section 2-11.1 (b) (1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.¹

Because you are a covered party under the Ethics Code, then Section 2-11.1 (d) of the Code likewise applies to you. The second part of Section 2-11.1 (d) of the Ethics Code, relating to voting conflicts, provides that a Councilmember shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Council] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official “would or might, directly or indirectly, profit or be enhanced by the action...” as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure “which would inure to his or her special private gain or loss.”²

As a preliminary matter, the fact that you have filed a civil action against the Village, its former Mayor, Manager, and City Attorney does not create an ongoing conflict, akin to conflicting outside employment, that would prevent your continued service on the Commission. There is no provision in the County Ethics Code that would prevent you from continuing to serve while the action is pending. There are prohibitions in the County Ethics Code that bar elected officials from representing third parties in actions against their municipalities, but these are not applicable to your scenario as we understand it.³

¹ The Ethics Code constitutes the minimum standard of ethical conduct and behavior for all municipal officials and officers. *See* Section 2-11.1 (a), Ethics Code.

² *See* INQ 14-86.

³ *See generally* RQO 15-04 regarding elected official voting conflicts; and Sections 2-11.1 (j) and (m), Ethics Code.

As regards participation and vote on the selection of a Village Attorney, we understand that John Herin, Jr. of the Fox Rothschild law firm is serving as Interim Village Attorney and is a candidate for selection as municipal counsel. We understand that the Village is retaining or will retain outside counsel, through its relationship with the Florida League of Cities, to represent it the civil action that you have filed. To the extent that Mr. Herin is currently or will be in the future engaged in that action, it will be only as in-house counsel providing discovery documents to the parties, monitoring billing by the outside firm, and similar matters. You do not have an enumerated relationship with Mr. Herin or his firm as defined in the voting conflict section of the County Ethics Code nor is it likely that you would be impacted by the selection of the Village Attorney that would, again, not be counsel of record in defense of the action that you have filed against the Village and its former officials. As such, we do not believe that your consideration and vote on the selection of Village counsel is prohibited by the voting conflict provision of the County Ethics Code.⁴

A similar analysis applies to the participation and vote on the selection of a Village Manager. To our understanding, the former Manager is not an applicant for the position nor are there any applicants that have any connection to the former Manager. We do not believe that your consideration and vote on the selection of the Village Manager is prohibited by the voting conflict provision of the County Ethics Code.

As regards your participation and vote on the Village's budget for the fiscal year of 2020 – 2021, we likewise do not believe that your participation and vote on that matter is prohibited by the voting conflict section of the County Ethics Code, with one caveat. If there is any portion of the budget that provides a funding source for the satisfaction of damages or litigation costs associated with actions filed against the Village or its officials, then you may wish to bifurcate your consideration and vote on the budget. For example, we have advised elected officials that have enumerated relationships with Community Based Organizations (CBOs) that the voting conflict provisions of the County Ethics Code would not preclude their vote on municipal budgets but that they should in abundance of caution, not participate or vote on that portion of the budget that funds CBOs. I am not informed on the specifics of the Village budget, but again, if there is a portion of the budget that is specifically designated to fund damages awards against the Village or to fund costs of litigation, you should not vote on that portion of the budget because of the civil action that you have filed against the Village that would be or could be funded out of that allotment.⁵

Finally, you are of course cautioned that you should not participate or vote on any future Village Commission agenda items relating to the civil action that you have filed against the Village, to include shade meetings regarding litigation strategy. You should likewise refrain from participating in any Village Commission workshops where the subject of the workshop will include the defense or funding of that litigation. The best course of action, from a voting conflict perspective, would be to seek further ethics guidance from the Ethics Commission before consideration or vote on any matter that directly or tangentially might related to that litigation.

⁴ See generally RQO 19-04.

⁵ See INQ 19-27

Thank you again for consulting with the Miami Dade Commission on Ethics and Public Trust and please do not hesitate to contact me should you require any additional assistance.

Sincerely,



Jose J. Arrojo
Executive Director

cc: All Commission on Ethics Legal Staff
John R. Herin, Jr., Esq. by email only: JHerin@foxrothschild.com

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.