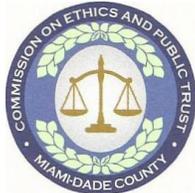


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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August 4, 2020

Via U.S. & Electronic Mail

Robert Meyers, Esq.  
Weiss Serota Helfman  
200 East Broward Boulevard, Suite 1900  
Fort Lauderdale, Florida 33301

Re: Ethics Inquiry Request, INQ 20-82, Homestead Councilman Stephen Shelly, Voting Conflict, Section 2-11.1 (d) of the County Ethics Code

Dear Mr. Meyers:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of the voting conflict provision of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance ("Ethics Code").

We respond as follows:

#### Facts:

The Homestead City Council will be considering a matter regarding a parcel of land ("the land") under the Homestead Air Reserve Base (HARB) flight path. The Commission's action may affect the use of the land and a settlement of a so-called "Bert Harris" claim.<sup>1</sup> The owners of the land, the City of Homestead, and the Government on behalf of HARB are all engaged in this matter.

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<sup>1</sup> The Bert J. Harris Jr. Private Property Protection Act statutorily created a cause of action for aggrieved property owners. If owners can prove that governmental action "inordinately burdens" their property, they are entitled to compensation. A property owner has to demonstrate that unreasonably "disproportionate" limitations or restrictions have been placed on investment-backed expectations for the existing use of the real property or a vested right to a specific use of the real property was denied by the governmental action. The act provides a mediation process for property disputes. The property owner may apply for relief if he alleges that the governmental action is "unreasonable" or "unfairly burdens" the property's use.

The land is held in trust and Richard and John Alger have joint ownership, trustee, or beneficiary interest in the trust (“the Trust”).

Patricia Robbins is Richard Alger’s spouse. It is believed that Patricia Robbins does not have any interest and is not a named trustee or beneficiary of the Trust that owns the land.

The voting member, Councilman Shelly, works for Farm Share, a not-for-profit organization. The member has worked for Farm Share since January 2016 and was the Chief Operating Officer until 2019 when he was promoted to his current position of Chief Executive Officer.

Patricia Robbins is an employee and principal of Shackleton Corporation. For several years, Ms. Robbins provided management services to Farm Share through a management contact between Farm Share and Shackleton. In 2019, the management agreement expired, and Shackleton was contracted by Farm Share to provide consulting services and serve as a historical and institutional knowledge resource. Ms. Robbins provides these services through this consulting agreement.

Neither Shackleton, Mr. Robbins, or any other Shackleton employees have the ability to control, manage, oversee, or direct the voting member or any Farm Share employees, or Directors. Its sole function under the agreement in place since 2019 is to provide information and advice, upon request to the voting member in his role as Chief Executive Officer of Farm Share or to Farm Share’s Directors.

Councilman Shelly does not believe that Ms. Robbins, in her role as a contract consultant to Farm Share, has the ability to affect his employment relationship with that entity.

Issue:

Whether Councilman Stephen Shelly, the Chief Executive Officer of Farm Share, has a prohibited voting conflict that would preclude his consideration and vote involving a Bert Harris claim against the City of Homestead regarding a parcel of land owned by a trust, when a person with an interest in the trust is married to a Farm Share consultant.

Discussion:

The County Ethics Code is applicable to County and municipal elected and appointed officials, employees, board members, their family members, and certain persons that transact with local government.

As regards Councilman Shelly’s consideration and vote on Bert Harris claims by the owners of the land against the City of Homestead, as a Councilman, he is a covered party under Section 2-11.1 of the Code of Miami-Dade County (“Ethics Code”). Specifically, as a Councilman, he is 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. <sup>2</sup>

Because he is a covered party under the Ethics Code, then Section 2-11.1 (d) of the Code likewise applies to him. Section 2-11.1 (d) of the Ethics Code provides that a Commissioner 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.

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, (3)(a) 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.”

In RQO 15-04, the Ethics Commission established a framework for evaluating whether local elected officials have a prohibited voting conflict under Subsection 2-11.1 (d) of the Ethics Code. In that case, the Ethics Commission opined that the voting conflict section creates three separate categories for potential conflicts:

An “automatic prohibited conflict” if the voting member has one of the following relationships with an entity "affected" by the vote before the board: officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; and

A “contingent prohibited conflict” if the voting member has one of the following relationships with an entity "affected" by the vote AND the matter would affect the person in a manner distinct from the manner in which it would affect the public generally: stockholder, bondholder, debtor, or creditor; and

A “broad prohibited conflict” if the voting member "would or might, directly or indirectly, profit or be enhanced by the action" of the board in-question.

In this case, the persons or entities that would be affected by the Council’s consideration and vote on the so-called Bert Harris claims would include the Trust that owns the land, Richard and John

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

Alger, and the Government as owners of HARB. Councilman Shelly does not have any of the enumerated employment, financial, or legal relationships contained in Section 2-11.1 (d) with any of these parties. As such, there is no automatic or prohibited conflict that would prohibit his consideration or vote on the matter.

In considering whether the third or broadest prong of the voting conflict section would apply to the voting member's consideration and vote on the matter, there must be some reasonable probability beyond remote or speculative, that Councilman Shelly or Farm Share, his employer, would be enhanced by a measurable financial profit, or some professional or social enhancement. (*See* RQO 15-04)

In order to find a voting conflict, one would have to conclude that a vote in support or opposition to the interests of the Trust, or Richard and John Alger, might influence Patricia Alger, Richard's wife and the principal of Shackleton, to provide consulting opinions to the Farm Share Board of Directors, upon request, that would be critical or complementary of Stephen Shelly's performance as Farm Share's Chief Executive Officer. Moreover, if provided, the opinions would have to impact Stephen Shelly financially, professionally, or socially.

While the above described scenario might occur, the probability that a consultant contracted to serve as a historical and institutional knowledge resource to Farm Share and who does not have any ability to control, manage, oversee, or direct the voting members or any Farm Share employees or Directors, might be able to impact Stephen Shelly financially or professionally as Farm Share's Chief Executive Officer is simply far too remote or speculative to create a prohibited voting conflict.

To be clear, the County's Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business. (*See generally* INQ 13-148 and RQO 12-03)

#### Conclusion:

Councilman Shelly does not have any of the enumerated employment, financial, or legal relationships contained in Section 2-11.1 (d) with the any persons or entities that may be affected by the Council's action. Because it is only at best a remote or speculative possibility that a vote in support or opposition to the interests of the Trust, or Richard and John Alger, might influence Patricia Alger, Richard's wife and the principal of Shackleton, to provide consulting opinions to the Farm Share Board of Directors, that would be critical or complementary of Stephen Shelly's performance as Farm Share's Chief Executive Officer, and might impact him financially or professionally, then he would not have a voting conflict pursuant to Section 2-11.1 (d) of the Ethics Code that would prohibit his consideration and vote on Bert Harris claims regarding the land under the HARB flight path.

This opinion is based on the facts as provided by the requesting party and only interprets the County Ethics Code. For opinions regarding the application of state voting conflict laws, please contact the Florida Commission on Ethics.

We hope that this opinion is of assistance and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,

*Jose J. Arrojo /s/*

Jose J. Arrojo  
Executive Director

cc: All Commission on Ethics Attorneys

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.