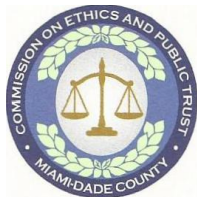


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August 4, 2020

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 20-83, Homestead Councilwoman Erica Avila, 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 Council's action may affect the use of the land and a settlement of a so-called "Bert Harris" claim.¹ The owners of the land (the Trust/Algers), the City of Homestead, and the Government/United States Air Force/HARB are all engaged in this matter.

¹ 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 voting member, Councilwoman Avila is married to Arnold Perez. Mr. Perez has been an employee of the United States Airforce since the end of 2008. He is currently employed as the Group Executive Officer for the 482nd Operations Group and assigned to HARB. The 482nd Fighter Wing, an Airforce Reserve Unit, is the HARB host. His duties are principally related to human resources, compliance and facilities management and include position fulfillment, personnel evaluations, personnel movements, personnel readiness, federal compliance programs, and facility management for the Operations Group. HARB self-reports that there are 1400 persons employed at the base.

It has not been suggested that the settlement of the Bert Harris claims, or the Council's action is going to impact the continued viability or existence of the HARB.

Issue:

Whether Councilwoman Avila's spouse's employment by the United States Airforce and assignment to the Homestead Air Force Reserve Base, creates a prohibited voting conflict that would preclude her consideration and vote involving a Bert Harris claim against the City of Homestead regarding a parcel of land owned by a trust, when the Government/Air Force/HARB may be impacted by the vote.

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 Councilwoman Avila's consideration and vote on Bert Harris claims by the owners of the land against the City of Homestead, as a Councilwoman is a covered party under Section 2-11.1 of the Code of Miami-Dade County ("Ethics Code"). Specifically, as a Councilwoman she 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.²

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

² 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.

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.” (See INQ 14-86)

Given the enhanced conflict voting prohibition in the Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in circumstances where an official might, directly or indirectly, profit or be enhanced by a vote. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. (See RQO 15-04)

The Ethics Commission has repeatedly considered voting conflicts arising from a voting member’s spouse’s employment by an entity affected by the vote. The reasoning underlying those opinions focused on the unique impact that the matter under consideration could have on the elected official’s spouse and the corresponding possible enhancement, direct or indirect, on the voting official.

In INQ 13-92, we have opined that an elected official should not vote or participate (including attendance at a workshop) in the consideration of alternative code enforcement system because the official’s spouse was the municipal code compliance director in a small municipality. Therefore, the reorganization of the code compliance department, including the use of special masters, could directly and uniquely impact the spouse’s job duties, work performance measurements, and salary and thus the elected official would or might directly or indirectly be enhanced by the vote.

More recently in INQ 18-251, we similarly opined that an elected official should not vote or participate on the selection of a city manager because the official’s spouse is employed by the city as an at-will department director and most if not all of her employment terms could be impacted by the newly selected city manager. Thus, the elected official would or might directly or indirectly be enhanced by the vote. (INQ 18-251)

Conversely, in INQ 19-001, a voting member was considering and voting on a collective bargaining impasse resolution and we opined that matter under consideration would not have a unique impact on the Council member’s firefighter son because he was in a bargaining unit that exceeded two hundred total members. The firefighter son would not be singularly impacted by the vote. Accordingly, the voting member would not be directly or indirectly enhanced by the vote and her participation and vote was not proscribed by Section 2-11.1 (d) of the Ethics Code.

In this case, the persons or entities that would be affected by the Commission’s consideration and vote on the so-called Bert Harris claims would include the Trust that owns the land, Richard and John Alger, and the Government/Air Force/HARB.

Councilwoman Avila 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 her consideration or vote on the matter. (See RQO 15-04)

There is nothing in the facts provided that suggests that the continued viability or existence of the HARB will be impacted by the Council's consideration or vote on the Bert Harris matter. Moreover, there is nothing to suggest that Mr. Perez, one of over a thousand employees at the HARB, will be uniquely impacted by the voting member's participation or vote on the matter. Thus, even under the broader voting conflict prohibition contained in Section 2-11.1 (d), Councilwoman Avila would not be directly or indirectly enhanced by the vote and her participation and vote on Bert Harris claims regarding the land under the HARB flight path is not proscribed by Ethics Code.

Conclusion:

Because Councilwoman Avila's spouse will not be uniquely impacted as one of over 1000 employees of the United States Airforce assigned to the HARB, then she will not be indirectly enhanced by her participation and vote on Bert Harris claims regarding the land under the HARB flight path. Her participation and vote are not proscribed by Section 2-11.1 (d) of the Ethics Code.

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.