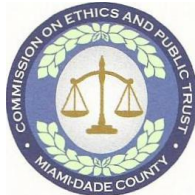


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 30, 2020

Via U.S. & Electronic Mail

Honorable Michael Joseph, Esq.
City of North Miami Beach
17011 Northeast 19th Avenue, 4th Floor
North Miami Beach, Florida 33162

Re: Ethics Inquiry Request, INQ 20-96, Persons or Entities Represented by Stephen Hunter Johnson and Voting Conflicts, Section 2-11.1 (d) of the County Ethics Code

Dear Commissioner Joseph:

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

We respond as follows:

Facts:

You are a Commissioner for the City of North Miami Beach, Florida. In the past, you have been represented on legal matters by attorney Stephen Hunter Johnson of the Lydecker Diaz law firm. You are currently not being represented by Mr. Johnson or Lydecker Diaz, have no outstanding financial obligations to him or his firm, and do not anticipate at this time that you will be retaining him or the firm for any legal or administrative matters.

Even if you choose to retain Mr. Johnson or Lydecker Diaz in the future, there is no expectation that you will receive any financial consideration regarding reduced retainer or legal fees as compared to other similarly situated clients.

Mr. Johnson or Lydecker Diaz may be representing parties in legislative or quasi-judicial matters that will come before the North Miami Beach Commission.

Issues:

Whether Commissioner Joseph, who was previously represented by Mr. Joseph of the Lydecker Diaz firm in a legal matter, has a prohibited voting conflict that would preclude his consideration and vote on legislative or quasi-judicial matters where persons or entities are represented by Mr. Joseph or Lydecker Diaz.

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 Commissioner Joseph's consideration and vote on matters where impacted parties may be represented by Mr. Johnson or Lydecker Diaz, he is a covered party under Section 2-11.1 of the Code of Miami-Dade County ("Ethics Code"). Specifically, as a Commissioner, 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.¹

Because he is a covered party under the Ethics Code, then Section 2-11.1 (d) of the Code likewise applies to him. The second part of 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 Commission] 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, (3)(a) that limits the

¹ 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.

county or municipal public officer from voting upon any measure “which would inure to his or her special private gain or loss.”

In INQ 15-248 the Ethics Commission considered whether a prohibited voting conflict would preclude a Commissioner from considering or voting on a zoning variance when the applicant was represented by an attorney that was also representing the elected official in an unrelated matter.

In that case, the Ethics Commission advised the Commissioner that, unless her relationship with the attorney might provide her with some benefit or advantage, for example, in terms of future services or fees connected to the attorney’s representation of her, then she would not have a prohibited voting conflict under Section 2-11.1 (d) of the Ethics Code.

In INQ 13-148 and RQO 12-03, the Ethics Commission considered somewhat related scenarios involving local elected officials that had prior business relationships with developers that were going to be affected by votes of that city’s commission. While opining that the elected officials did not have *per se* voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code prohibiting their consideration and vote on matters that would affect the developers, the Ethics Commission advised that:

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.

Finally, in INQ 20-77, the Ethics Commission considered whether a prohibited voting conflict would preclude a Commissioner from voting to waive any conflicts in representation to allow for the retainer of an attorney to represent his city in a an action against the County, while the attorney was concurrently representing the Commissioner in an unrelated legal matter.

In that case, the Ethics Commission advised the Commissioner that because there was no evidence that his affirmative vote to waive representation conflicts and to retain the attorney as outside municipal counsel might provide him with some direct or indirect benefit, profit or advantage, then there was no voting conflict.

Conclusion:

Applying the rationale underlying the Ethics Commission’s conclusions in the opinions cited above, Commissioner Joseph 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 legislative or quasi-judicial matters where persons or parties may be represented by Mr. Johnson or Lydecker Diaz.

This latter conclusion is premised on the fact that there has been no evidence presented that his vote on these matters might provide him with some benefit or advantage and with the understanding that the Ethics Code provides the minimum standard of conduct for local officials and does not address “appearance of impropriety” issues.

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
Executive Director

cc: Daniel A. Espino, Esq.
Weiss Serota Helfman Cole & Bierman (by email only)
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.