



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Lynn B. Lewis
Former member, City of Miami Historic and Environmental Protection Board

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-98

DATE: October 1st, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts:

You previously served as a member of the City of Miami Historic and Environmental Protection Board (hereinafter “HEP Board”). You stopped serving on the HEP Board in February 2020.

While you were a board member, the HEP Board heard an application filed by Convent of the Sacred Heart of Miami Inc. (“Applicant”) to develop a new school in the South Bayshore Drive/Tigertail Avenue residential neighborhoods. The HEP Board considered the Applicant’s request for two (2) approvals: one regarding historic preservation which is called a “Certificate of Appropriateness”; and one regarding development in an environmentally protected district which is called a “Certificate of Approval.”

As a HEP board member, you heard and voted on the applications, which were denied by vote by the HEP board.¹ The school applicant has filed an appeal of the HEP board decision to the City of Miami Commission.

¹ The City of Miami Code provides that a person who is aggrieved by a decision of the HEP Board has the right to appeal to the City of Miami Commission.

You have been asked to offer **legal representation**² to certain opponents to the proposed school, specifically Bayshore in Grove Inc., a Fla. not-for-profit corporation. It is a neighborhood advocacy entity.

You anticipate that your representation could involve:

1. Representation before the City Commission in the appeal of the HEP board filed by the school applicant. You have indicated that the City Commission would conduct a hearing *de novo*, under Chapter 23 and 17 of the Miami Code; and
2. Representation before the City of Miami Planning and Zoning Appeals board for matters arising under the City of Miami Zoning Code.

You have also indicated that all your professional services will be offered on a *pro bono* basis; and any out-of-pocket expenses will be reimbursed by your Client.

Issue:

Whether the Miami-Dade County Conflict of Interest and Ethics Ordinance prohibits a former member of the City of Miami's Historic Environmental Protection Board (HEP Board), from representing a party before the City of Miami Commission or the City of Miami Planning and Zoning Board, on an appeal of an issue that the former board member participated and voted on while they were a member of the HEP Board.

Discussion:

There is no provision of the Ethics Code that specifically addresses this issue. Sec. 2-11.1(q) of the County Ethics Code (Two-year post-employment restrictions) prohibits "an elected County official, [ie., Mayor, County Commissioner] or a member of the staff of an elected County official, or as County Manager, senior assistant to the County Manager, department director, departmental personnel or employee" from LOBBYING any County officer or employee "in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest..." for two years after his or her County employment has ceased.

Members of the HEP Board are considered "quasi-judicial personnel" who do not fall under the County's two-year post-employment restrictions. Consequently, pursuant to Sec. 2-11.1(q) of the County Ethics Code, a former board member may meet with staff, appear before the City Commission on behalf of his or her private employer or appear before the board on a quasi-judicial matter. *See* INQ 15-231.

While the County has placed these post-employment restrictions on former County officials and employees, the City has enacted a more stringent standard of conduct with

² You anticipate that your legal representation of Bayshore in Grove, Inc., would include legal and factual research; identification and preparation of expert witnesses; preparation of affidavits, covenants and agreements; preparation of presentations, exhibits, both expert and non-expert witnesses; professional collaboration with co-counsel; advocacy before the Miami City Commission and the Miami Planning and Zoning Appeals Board on the Applicant's zoning matter.

respect to its post-employment restrictions, as evidenced by Section 2-612 (a-c) of the City Code.

Section 2-612 (a) of the City of Miami Code, states, in relevant part: “No person included in section 2-611 [officer, official and employee of the city, including every member of any board, commission or agency of the city] shall enter into any contract or transact any business with the city or any person or agency for the city, or shall appear in representation of any third party before any board, commission or agency of which such person is a member...” Section 2-612 (c) provides that the activity described in subsection (a) “shall remain in effect for a period of two years after the officer, official, or employee has left city service or terminated city employment.”

As stated therein:

- 1) No current board member shall contract or transact any business with the city;
- 2) No current board member shall appear in representation of any third party before his or her board;
- 3) No former board member shall contract or transact any business with the city two years after leaving City service;
- 4) No former board member shall appear in representation of any third party **before his or her former board** for two years after leaving city service.

See INQ 15-231.

Based on the information that you provided, it does not appear that Section 2-612 (a) of the City of Miami Code, would preclude you from appearing before the City of Miami Commission and the City of Miami Planning and Zoning Board, as you did not serve on either of those two boards. *See* INQ 15-231. However, the section does prohibit you from appearing in representation of any third party **before the HEP board** on which you served, for two years after leaving City service.

Further, please note that should any of your activities or the representation of your client include lobbying City officials or City employees, you are prohibited from lobbying on behalf of that third party before the HEP Board on which you served. *See* Section 2-612 of the City of Miami Code and INQ 15-231. You must also comport to the lobbying registration and training requirements under the County and City Codes.

Opinion:

Consequently, you are not prohibited from representing a third party before the City of Miami Commission or the City’s Planning and Zoning Board on an appeal of an issue that you previously voted on as a member of the City’s HEP Board. However, pursuant to Section 2-612 of the City of Miami Code, you may not appear in representation of any third party **before the HEP board** on which you served, for two years after leaving City service; and you may not lobby or attempt to influence any official decision or official action **before**

the HEP board on which you served, for a period of two years following your separation from the City board.

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.