



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Juan Prieto, President
Florida Engineering Society

Irela Bague
Chief, MDC Bay Officer

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-121

DATE: September 1, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest with the potential appointment of a selected engineer to the Biscayne Bay Watershed Management Advisory Board as recommended by the Florida Engineering Society.

Facts:

The Biscayne Bay Watershed Management Advisory Board (BBWMAB) is a new advisory board that provides a local perspective on Biscayne Bay problems, issues, and solutions.¹ It will include representatives from a variety of local entities and groups, all of whom will have demonstrated an interest and commitment on Biscayne Bay matters. The BBWMAB will serve to advise the Board and the County Mayor on a variety of Biscayne Bay-related issues, provide local perspective and make recommendations for a new Miami-Dade County Biscayne Bay watershed management plan. The BBWMAB will not have bonding authority nor any authority to enter a contract of any kind.

¹ See Section 1. Article CLXIV of Chapter 2 of Section 2-2420 of the Code of Miami-Dade County, Miami-Dade County Biscayne Bay Watershed Management Advisory Board.

As part of the BBWMAB formation, Florida Engineering Society (FES) is to recommend “[o]ne representative who is a coastal engineer working in Miami-Dade County.”²

FES is a professional association for engineers. FES supports engineering education, advocates licensure, promotes the ethical and competent practice of engineering, and enhances the image and well-being of all engineers in the state of Florida; and furthers the public’s knowledge and understanding of the importance of the profession. As President of FES, Juan Prieto is creating a selection process to choose the FES engineering representative.

Mr. Prieto has advised that due to the specialization and expertise needed for this advisory board, it is likely that any potential candidate may be a County vendor or work for a County vendor. It is Mr. Prieto’s intention to provide any potential candidate with as much information as possible to avoid any possible conflicts of interest.

Issue:

Whether any prohibited conflict of interest would exist between a County vendor’s appointment to the BBWMAB.

Discussion:

The Miami-Dade County Ethics Code at Sections 2-11.1(c)(2) and (d) allow board members to enter into a contract, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of their duties to the County. *See* RQO 06-52. However, the board member is prohibited from voting on any matter involving said contract and may not receive any salary or compensation from any funds provided for under said contract. *See* RQO 06-52. Notably, while it is clear that the BBWMAB does not have authority to enter into contracts, it is important to note the parameters of board service.

Additionally, Section 2-11.1(v) of the Miami-Dade County Ethics Code prohibits a board member from voting on any matter where the member will be directly affected by the vote and has a prohibited relationship (i.e., officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any corporation, firm, entity or person appearing before the member’s board or committee.

A conflict exists where a member has an employment relationship with an entity that has an issue coming before his or her board *and* the member will be directly affected by the action of the board. *See* RQO 06-52; INQ 19-12. For example, while a board member may serve on the Board and make

² *See* Sec. 2-2421 (i) 8. providing that the board shall be composed, *inter alia*, of one representative who is a coastal engineer working in Miami-Dade County, as recommended by the Florida Engineering Society.

recommendations on the overall plan, action, project, or program for Biscayne Bay related matters, a board member may encounter possible conflicts if his or her recommendations would result in a direct financial benefit to his or her company. *See* INQ 13-117. In the event a situation arises where a board member's personal or financial interests may be affected by the Board's action and/or the board member's relationship with a third party appearing before the Board falls into one of the prohibited relationships described herein, we recommend the board member seek an opinion from this office. *See* RQO 07-49; INQ 16-219.

Your inquiry may also implicate other sections of the Miami-Dade County Ethics Code. For example, Section 2-11.1(m)(2) of the Miami-Dade County Ethics Code prohibits a board member from receiving compensation, *directly or indirectly or in any form*, for any services rendered to the third party seeking a benefit from his or her board. *See* RQO 07-12; INQ 15-229; INQ 19-12.

Additionally, Section 2-11.1(m)(2) of the Miami-Dade County Ethics Code prohibits a board member from appearing before the City board in which he or she serves, *either directly or through an associate*, and make a presentation on behalf of a third party. *See* RQO 07-39; INQ 17-254. This means you must not lobby or try to influence your board for the benefit of your companies. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. *See* INQ 09-33; INQ 11-178.

Section 2-11.1(h) of the Miami-Dade County Ethics Code prohibits a board member from engaging in any business activities which may require or induce him or her to disclose or use confidential information acquired by reason of your board position for your personal gain or benefit.

Section 2-11.1(g) of the Miami-Dade County Ethics Code prohibits a board member from using his or her official position to secure special benefits, privileges or exemptions for herself or others. In other words, while a board member may share his or her knowledge and expertise in the area of Biscayne Bay related matters, said board member may not use his or her service on the Board to proffer or promote the use or sale of the board member's company or products.

Lastly, pursuant to Section 2-11.1(i), all board members must file financial disclosure forms every year. Should you have any questions feel free to contact the Commission on Ethics or the Miami-Dade County Elections Department.

Conclusion:

Consequently, while there is no prohibited conflict of interest that would preclude a County vendor from serving on an advisory board, board members must adhere to the limitations provided above to avoid potential conflicts of interest. Board members are encouraged to seek further opinion from the Commission on Ethics should any potential conflicts arise.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.