



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Juana Leon, Administrative Services Manager
The Children's Trust

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-132, Voting Conflict, §2-11.1(d)

DATE: October 5, 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 voting conflicts of interest by The Children's Trust board members on Resolution 2022-D SYIP.

Background:

The Children's Trust Board (TCT) is an independent special district established by Miami-Dade County in Art. CIII, Sections 2-1521 through 2-1531 of the Miami-Dade County Code (TCT ordinance).

You have advised that Resolution 2022-D, recommending, "[a]uthorization to negotiate and execute a match contract with Miami-Dade County for the seventh year of the Summer Youth Internship Program, in a total amount not to exceed \$1,500,000.00, for a term of 12 months, commencing March 1, 2022, and ending on February 28, 2023," will be considered at an upcoming meeting of TCT board.

The Children's Trust has supported the Summer Youth Internship Program (SYIP) for several years and the Resolution seeks additional funding in support of SYIP. The collaboration for SYIP includes the South Florida Workforce Investment Board (SFWIB), Miami-Dade County, Miami-Dade County Public Schools (M-DCPS), and The Foundation for New Education Initiatives, Inc. (The Foundation). The Children's Trust will contract with Miami-Dade County to pool funding for the program, and Miami-Dade County will contract with The Foundation to fund, implement and operate the program. SFWIB matches The Children's Trust's commitment to financing and contracts with M-DCPS to fund the internship program. M-DCPS and The Foundation provide additional in-kind resources vital to the program's success.

The SYIP internship program recruits and subsequently connects rising 10th to rising 12th grade students (including youth with disabilities and youth involved in the child welfare system) who live in Miami-Dade County with paid summer internships. There is an emphasis on engaging at-risk youth, and at least 10 percent of program participants will be youth with disabilities. The program intends to employ at least 2,500 youth interns. The youth interns will each set up a credit union account with collaborating partner EdFed Credit Union, earn a stipend of \$1,300.00 and work 30 hours per week for five to six weeks. In addition to receiving a stipend for summer work experience, youth interns may also earn high school course credits and be allowed to earn college credits.

You inquire on behalf of several TCT board members regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2022-D. You make this inquiry in light of the members' relationships with various entities that form the partnership which provide funds through this Resolution to facilitate SYIP:

- 1) Magaly Abrahante works for M-DCPS. She serves as an Assistant Superintendent responsible for early childhood programs, exceptional student education (ESE), and Title I programs. While the program benefits children who attend M-DCPS, Dr. Abrahante has no oversight over the program, nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project, as it will provide in-kind contributions secured in support of the project.
- 2) Tiombe Bisa Kendrick-Dunn is employed by M-DCPS as a school psychologist and is the Chairperson for Professional Growth & Development at M-DCPS. While the program benefits children who attend M-DCPS, Dr. Kendrick-Dunn has no oversight over the program, nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project, as it will provide in-kind contributions secured in support of the project.
- 3) Richard Dunn works part-time for M-DCPS. While the program benefits children who attend M-DCPS, Pastor Dunn has no oversight over the program, nor will he receive a benefit from the program. M-DCPS is a funding contributor to this project, as it will provide in-kind contributions secured in support of the project.
- 4) Dorothy Bendross-Mindingall is a M-DCPS board member. While the program benefits children who attend M-DCPS, Dr. Bendross-Mindingall has no oversight over the program, nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project, as it will provide in-kind contributions secured in support of the project.
- 5) Commissioner Danielle Higgins is a Miami-Dade Commissioner and was appointed as a board member by the Chair of the Miami-Dade County Commissioners. While the program benefits children who attend M-DCPS and Miami-Dade County is a funding partner, Commissioner Cohen Higgins has no oversight over the program and will receive no benefit from the program.

- 6) Nelson Hincapie is the Miami-Dade County Mayor's appointee to The Children's Trust Board. While the program benefits children who attend M-DCPS and Miami-Dade County is a funding partner, Mr. Hincapie has no oversight over the program and will receive no benefit from the program.
- 7) Sandra West is the appointee for the Miami-Dade County PTA/PTSA. PTA/PTSA is an independent entity that supports advocacy for M-DCPS. Ms. West is also serves on the Board of Directors for **the Foundation**.
- 8) Alexandra Martin is the representative for the Student Government Association (SGA). While the program benefits children who attend M-DCPS, Ms. Martin has no oversight over the program, nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project, as it will provide in-kind contributions secured in support of the project.

Discussion:

This office may consider and opine on whether a TCT board member has a conflict of interest, pursuant to the County Ethics Code, affecting his or her vote or participation in a funding allocation from TCT. *See* RQO 19-06

TCT's Conflict of Interest and Code of Ethics Policy states, inter alia, that a board member shall not vote on any matter presented to the TCT Board if the member will receive a direct financial benefit from the board action. TCT's Bylaws also provides that, "Board members will act in such a manner to avoid the appearance of impropriety. No member shall serve as a staff member of any agency when The Children's Trust provides more than fifty (50) percent of the agency's budget, and The Children's Trust's funds may pay no portion of a Board member's salary."

There are no facts indicating that any of the board members will be receiving a direct financial benefit from board action, therefore, a conflict analysis under TCT rules is not applicable.

The Ethics Code at Section 2-11.1(d), establishes a voting conflict if:

- 1) The board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote;
- 2) The board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it would affect the public generally; and,
- 3) The board member might, directly or indirectly, profit or be enhanced by the board action.¹
See RQO 15-04.

¹ This section of the County Ethics Code applies to the Mayor and members of the Board of County Commissioners (BCC); however, by implication, members of The Children's Trust board may be included for purpose of analysis because, as an independent special district, the role and authority of TCT members mimics the role of the BCC, as ultimate decision-makers of contracts allocating funds such as the ones described herein.

An automatic voting conflict arises when the board member has a prohibited relationship with the entity *affected* by the Resolution.

In this instance, TCT board members Magaly Abrahante, Tiombe Bisa Kendrick-Dunn, Richard Dunn, and Dorothy Bendross-Mindingall are employees, officers, or board members of M-DCPS, which is a funding contributor to the program by providing in-kind resources to the program. M-DPCS is not receiving funding from this Resolution.

Moreover, even though Magaly Abrahante, Tiombe Bisa Kendrick-Dunn, Richard Dunn, and Dorothy Bendross-Mindingall, are employees or officers of M-DCPS, they are “not automatically disqualified from participating in an item that would affect the governmental entity [because they would not] personally profit or be enhanced personally in any way in the event that [the] Resolution is passed and the program it promotes becomes a reality.” See INQ 20-47, quoting “Government Agency Employment Relationship Exception” in Memorandum to RQO 19-04, and INQ 18-68.

Additionally, it does not appear that the above-mentioned board members have any oversight, supervision, or control over SYIP since the Foundation, not M-DCPS, will fund, implement and operate the program. It also does not appear that any special benefit will come to them by virtue of their relationship with M-DCPS. Therefore, they have no voting conflicts.

As to TCT board member Alexandra Martin, she is an officer of an entity affiliated with M-DCPS. While M-DCPS is a funding contributor to the program by providing in-kind resources to the program, M-DCPS is not receiving funding from this Resolution. Further, the SGA, for which Ms. Martin serves as an officer, will not receive any funding through this Resolution. She does not have a prohibited enumerated relationship any entity affected by this Resolution; therefore, no voting conflict arises under this principle. It also does not appear that any special benefit will come to her by virtue of her relationship with M-DCPS.

As to Commissioner Cohen Higgins, although she is an official of Miami-Dade County, which is a funding partner for this Resolution, she too “is not automatically disqualified from participating in an item that would affect the governmental entity [because she would not] personally profit or be enhanced personally in any way in the event that [the] Resolution is passed and the program it promotes becomes a reality.” See “Government Agency Employment Relationship Exception” in Memorandum to RQO 19-04, quoting INQ 18-68.

Additionally, TCT is not receiving or providing direct funding to/from the Board of County Commissioners on which she serves. Therefore, there is no unique impact which would create a voting conflict as Commissioner Cohen Higgins would not be affected by this vote in a matter distinct from the public generally.

Further, any possible indirect benefit to her as a Miami-Dade County Commissioner, is too remote to create a voting conflict. See INQ 20-46; INQ 20-47; and INQ 20-48.

As to TCT board member Nelson Hincapie, he does not have a prohibited enumerated relationship with any entity affected by this Resolution; therefore, no voting conflict arises under this principle.

Moreover, none of the above listed board members referenced herein would be affected by this vote in a matter distinct from the public generally: M-DCPS and Miami-Dade County will benefit in the agreement by way of their contribution to the overall purpose of “offering both practical work experience and developmental opportunities” to students and “enable participants to contribute to the county’s workforce as they develop critical skills.” There are no facts indicating that any of the above listed board members referenced herein might profit or be enhanced by the board action authorizing the negotiation and execution of a match contract with Miami-Dade County for the seventh year of the Summer Youth Internship Program.

Lastly, as to TCT board member Sandra West, she is an officer for the Miami-Dade County PTA/PTSA, an independent entity affiliated with M-DCPS, but also serves on the Board of Directors for the Foundation. While M-DCPS is a funding contributor to the program by providing in-kind resources to the program, M-DCPS is not receiving funding from this Resolution. Further, the PTA/PTSA, for which Ms. West serves as an officer, will not receive any funding through this Resolution. However, Ms. West does have an enumerated relationship with the Foundation, an entity affected by the funding subject of this Resolution, as it is tasked with funding, implementing, and operating SYIP.

An automatic voting conflict exists where the board member is an officer of an entity that is affected, *directly or indirectly*, by the vote. *See* INQ 17-247; INQ 13-165; INQ 04-131 (*citing to relevant para. in* RQO 03-06).

We also cannot ignore the heightened appearance of impropriety standard imposed on all TCT board members pursuant to TCT Policy and Bylaws. This heightened appearance of impropriety ethical standard should be enough to avoid participation and/or vote on an item connected to the entity where the board member is employed or serves. *See* INQ 16-273 (finding that the vice-president of the bank where TCT has account may serve on the board but may have a voting conflict in the future regarding issues connected in any way to TCT's relationship with the bank because, even if there is no financial interest on the part of the board member, the existence of a heightened appearance of impropriety ethical standard should suffice); *See also* INQ 15-113 (concluding that a board member of TCT employed or member of an agency receiving funding from TCT must disclose the conflict publicly, file a written disclosure and abstain from speaking on the issue).

Hence, this office recommends that Ms. West follow a conservative approach and recuse herself in this instance, where the Resolution allocating funding directly or indirectly affects the entity of which she is an officer. *See* INQ 14-212.

Opinion:

Consequently, under the details provided concerning this Resolution of TCT, authorizing the negotiation and execution of a match contract with Miami-Dade County for the seventh year of the Summer Youth Internship Program, we recommend that Ms. Sandra West refrain from voting

or participating in funding matters *directly or indirectly* affecting the Foundation where she serves as an officer because she has an automatic conflict of interest as Board of Director of the Foundation; the Foundation's funding does not meet the "minor allocation" exception in RQO 19-04; and, recusal is in accordance with COE opinions as well as the heightened appearance of impropriety standard in TCT Policy and Bylaws.

However, it does not appear that any of the remaining board members referenced herein will profit or be enhanced by this vote nor will a special benefit come to any of them in their capacities as employees, appointees, officers or members of their respective governmental/non-profit entities. Also, based on the overall purpose and goal of the SYIP, and the participation objectives of the entities involved, said members' voting and participation would not raise the perception of an appearance of impropriety in this Resolution.

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.