



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Annika Holder, Interim Director
Miami-Dade Community Action and Human Services Department

FROM: Jose J. Arrojo, Executive Director
Gilma-Diaz-Greco, Staff Attorney 

SUBJECT: INQ 2021-51, Conflicts of Interest regarding CAHSD employees as DVOB Board Members, §2-11.1(v), (g),(j), and (m)(2).

DATE: March 25, 2021

CC: COE Legal Staff
Ivon Mesa, Chief Targeted Services Bureau, CAHSD
Elizabeth Regalado, Executive Director, DVOB
Ana Bustamante, Chief of Staff, Commissioner Joe A. Martinez, District 11
Betty Aguirre, Chief of Staff, Commissioner Rebecca Sosa, District 06

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (COE) and requesting our guidance pursuant to a recommendation in a 2020 County Auditor's report (attached) regarding possible conflicts of interest involving County employee service on the Miami-Dade Domestic Violence Oversight Board (DVOB). Your inquiry regarding County employee service on the DVOB included a Miami-Dade County Community Action and Human Services Department (CAHSD) employee's service on DVOB and her concurrent employment as a Chief in CAHSD's Targeted Services Bureau which oversees and administers County Domestic violence programs and services.¹

Issue:

Whether the County Ethics Code prohibits a CAHSD employee whose job duties include oversight and administration of CAHSD's domestic violence programs from concurrently serving as an appointed member of the DVOB which advises the Board of County Commissioners (BCC) on all policy and funding matters related to Miami-Dade County domestic violence issues, including domestic violence shelter construction and operation as well as CAHSD administered domestic violence residential and non-residential programs.

¹ Upon the courtesy distribution of a draft of this ethics opinion to referenced parties, the CAHSD Targeted Service Bureau Chief, Ivon Mesa, resigned her position from the DVOB. Ms. Mesa fully cooperated with the COE's review of this matter.

Background:

CAHSD Domestic Violence Programs and Funding:

CAHSD and its community partners provide a comprehensive set of services for victims of domestic violence. CAHSD's activities are coordinated by its Violence Prevention and Intervention Services (VPIS) Division. CAHSD employee Ivon Mesa serves as VPIS' Targeted Services Bureau Chief. VPIS staff manage and operate the County's nonresidential Coordinated Victims Assistance Center (CVAC). VPIS also currently manages and operates the County's residential domestic violence shelters and transitional housing programs.

As of June 2020, Miami-Dade County owns and operates the only State of Florida Certified domestic violence shelter program. Under this certificate Miami-Dade's CASHD operates several domestic violence shelters. These are Safespace North and South facilities, and the Lodge (now called Safespace Central). VPIS will also manage and operate the newly constructed County emergency shelter, which is scheduled to open in April 2021 under the name of the Empowerment Center. VPIS also manages and operates the County's two transitional housing facilities for victims of domestic violence. VPIS staff positions and operations are funded by County general funds and other sources of Domestic Violence funding. Funding for nonresidential domestic violence programs and residential transitional housing and shelter construction and operation comes from several sources including federal, state, and County general funds and a portion of the Miami-Dade Food and Beverage Tax (F&B Tax)² for domestic violence which must be allocated solely to the construction and operation of domestic violence shelters.

The one percent (1%) Homeless and Domestic violence portion of the F&B tax money (One Percent Tax) is collected by the County Tax collector's office³ and deposited in the Miami-Dade County Tourist Development Trust Fund⁴ (TD Trust Fund) which is managed by the County Finance Department. Eighty-five percent (85%) of the One Percent Tax is to be used for homeless shelter operations and fifteen percent (15%) of this tax is to be used for the construction and operation of domestic violence shelters.⁵ Upon BCC approval in accordance with County ordinances and the yearly County budget processes, the F&B One Percent Tax in the TD Trust Fund are distributed to the Homeless Trust and included in its annual budget. The HT administers the 85% portion of the One Percent Tax for its homeless shelter operations. The Domestic Violence

² Pursuant to Florida Statute § 212.0306, Miami-Dade assesses a tax on food and alcoholic beverages in certain establishments, otherwise known as the Food and Beverage Tax. The Food and Beverage Tax which applies to domestic violence is a one percent sales tax that is collected on food and beverage sales. The statute is implemented through Miami-Dade County Ordinance 94-156 with 85% of the tax receipts to be used by the Homeless Trust, and *"not less than 15% of these funds shall be made available for construction and operation of domestic violence centers."* Florida Statutes define a domestic violence center as "an agency that provides services to victims of domestic violence as its primary mission."

³ Miami-Dade Code §29-51.

⁴ Miami-Dade Code §29-54(d).

⁵ *Id.*

Oversight Board (DVOB) makes recommendations on the use of the 15% portion of the One Percent Domestic Violence F&B Tax funds to coordinate and monitor the construction and programmatic operation of Domestic Violence Shelters constructed with F&B domestic violence funds (Safespace Central and The Empowerment Center) which are under the administration and oversight of CAHSD.⁶

Safespace North, and South are owned and operated by the County; they were not constructed with F&B funds. The Lodge (now called Safespace Central), also owned by the County, was constructed with F&B tax funds together with various State and local grants. This facility was previously operated by Victim Response, Inc. (VRI), a nonprofit community-based organization. However, VRI's contract with the County was not renewed and ended on June 8, 2020 and management and operations of the Lodge as well as the funds previously paid to VRI for management of the Lodge (now Safespace Central) were transferred to CAHSD on June 9, 2020. As a result, CAHSD and its VPIS division now directly receive funding from all domestic violence funding sources for the administration of County domestic violence programs, emergency shelters, and transitional housing. The DVOB makes policy and funding recommendations to the BCC for all domestic violence issues and programs in Miami-Dade County which directly and indirectly impact CAHSD VPIS' division operation and funding.

Domestic Violence Oversight Board:

The DVOB was established by Miami-Dade County Ordinance No. 94-156, amended as Miami-Dade Code Art. LXVI, Sections 2-891 to 2-895, to serve in an advisory capacity to the Board of County Commissioners (BCC) on all issues related to domestic violence. It also coordinates and monitors the construction process and programmatic operations of domestic violence centers in Miami-Dade County. The 15-member board includes domestic violence stakeholders and appointees of the BCC and the County Mayor. In the past, CAHSD's previous Director, and VPIS Division Chief, Ivon Mesa, also concurrently served as board members on the DVOB. The previous CAHSD director has retired and no longer serves on the board, but Ms. Mesa was reappointed as a board member on November 17, 2020.

DVOB responsibilities include submitting a comprehensive plan (The Plan)⁷ to the BCC providing specific recommendations on policy and allocation of all funding sources for all County domestic

⁶ Homeless Trust Budget Narrative 2019-2020 at 98.

⁷ DVOB ordinance, Section 2-893, Miami-Dade Code states:

The board shall have the following powers, duties, functions, and responsibilities:

- (1) To serve in an advisory capacity to the Board of County Commissioners with respect to all issues affecting or relating to domestic violence;
- (2) To submit to the Board of County Commissioners a comprehensive plan, budget, and specific recommendations for use of the portion of the food and beverage tax proceeds dedicated to the provision of domestic violence shelters (hereinafter referred to as "the plan") which shall address the following issues:
 - a. The construction and operation of domestic violence shelters, and the expansion of existing domestic violence shelters;
 - b. The maximization of funds by matching available Federal and State funds;
 - c. The relationship between domestic violence centers, the courts, police, other criminal justice agencies and social services; and

violence programs including recommendations for the use of the portion of the F&B Tax⁸ apportioned to the construction and operation of domestic violence centers. The Plan addresses construction and operation of domestic violence shelters, the expansion of existing domestic violence shelters, the maximization of funds by matching federal and state funds, the relationship between domestic violence centers, the courts, police, other criminal justice agencies, and social services, and other issues the DVOB finds relevant and necessary.⁹ The DVOB is tasked with reviewing the Plan annually to ensure it serves the needs of the community and with recommending amendments, deletions, or modifications of the Plan to the Board. The BCC “shall only have the power to amend the plan by an affirmative vote of a two-thirds (2/3) majority”.¹⁰

Ms. Mesa and other VPIS staff serve as Subject Matter Experts (SME) for the DVOB and provide the Board with research and staff recommendations regarding the County’s domestic violence issues and programs including recommendations on budget allocations for programs and shelters that are managed and operated by CAHSD’ VPIS division. Thus, the DVOB’s advisory role to the BCC directly addresses and impacts operations and funding to CAHSD and to the VPIS division for its oversight and management of domestic violence programs, shelter, and transitional housing operations.

The County Mayor’s office was previously responsible for the oversight of the DVOB and domestic violence programs and shelter funding. Revenues and a County Staff position supporting the DVOB’s work were administered by the Miami-Dade Homeless Trust (HT). However, in June 2019, the BCC via County resolution¹¹ transferred DVOB oversight from the County Mayor’s office to the Miami-Dade Office of Community Advocacy (OCA) under the supervision of the BCC. Additionally, funding for the management and operation of the Lodge (currently named Safespace Central) was previously overseen by the HT. Subsequently, while retaining financial oversight, HT has contracted with CAHSD (which is still under the Mayor’s purview) to administer client services and provide day-to-day oversight of the facility. Consequently, CAHSD’s VPIS division now has oversight and administration of all of the County-owned domestic violence shelters and receives funding for their operation.

d. Other issues that the board finds relevant and necessary.

This plan shall be specific and shall, to the extent practical, detail intended programs, the nature of facilities to be assisted, identify potential complimentary or leveraged funding sources and the amount of funds which could be generated from such sources.

(3) To review the plan annually to assure that the plan continues to serve the needs of the total community and victims of domestic violence and to recommend any needed amendments, deletions, or modifications to the Board of County Commissioners. The Board of County Commissioners shall only have the power to amend the plan by an affirmative vote of a two-thirds (2/3) majority.

⁸ In 2019, the BCC passed Resolution 1095-19, directing the County Auditor to review the apportionment and use of the One Percent F&B Homeless and Domestic Violence Tax.

⁹ Miami-Dade Code § 2-893(2).

¹⁰ Miami-Dade Code § 2-893(3).

¹¹ Miami-Dade County Resolution Number 19-81.

Possible conflict of interest regarding dual role as a CASHD employee and DVOB board member raised by two previous County Agency reports:

Two previous reports by County agencies addressed the County's Domestic Violence programs. In 2018, the Office of Management and Budget (OMB) prepared a report titled "A Review of Miami-Dade County's Domestic Violence Programs." One of the OMB's recommendations in this report addressed the dual role of CASHD employees who also served on the DVOB: The relevant recommendation stated:

As voting members of the DVOB, County employees providing direct services to victims of domestic violence may not be in a position to conduct oversight over their own operations. As an alternative, membership of CAHSD and MDPD personnel could be limited to non-voting technical assistance.¹²

The DVOB's Fiscal year 2019 Annual Report included a response to the OMB's 2018 review. Regarding mitigating potential conflicts of interest on the Board, the DVOB stated that any potential Board conflicts should be referred to the COE and the County Attorney, with the ultimate responsibility borne by the BCC and the Mayor.

In June 2020, the County's Audit and Management Services Department (AMS) prepared a memorandum assessing VRI's administration of its March 29, 2016 Contract with the County to operate the Lodge (now Safespace Central) with funding from the County's Domestic Violence Trust Fund. The memorandum also addressed the "Role of the DVOB."¹³ In this regard, AMS referenced OMB's finding related to a potential conflict with board members who are also County employees.¹⁴ One of the resulting recommendations in AMS's memorandum was that "The DVOB should ... clearly define Board membership requirements in light of potential conflicts ..."¹⁵

The AMS memorandum required a written a response pursuant to *Administrative Order No. 3-7* within 30 days. You responded that you would ask the COE for an opinion regarding the possible conflict issue raised in the report and you subsequently asked the Ethics Commission to opine on whether prohibited conflicts of interest would exist for CAHSD employees, or any County employee, to serve on the DVOB.

Subsequently, you asked the COE to opine on whether prohibited conflicts of interest would exist for CAHSD employees to serve on the DVOB.

¹²Miami-Dade Office of Management and Budget Report "A Review of Miami-Dade County's Domestic Violence Programs." January 2018 Page iv.

¹³ Memorandum from The Miami-Dade Audit and Management Services Department on "Audit Report - Victim Response, Inc.", page 5. (June 3, 2020) (on file with author) ("AMS Memo").

¹⁴ AMS Memo, page 7.

¹⁵ AMS Memo, page 8. The Memorandum further stated that, from a risk management perspective, greater discretion should be exercised in appointing county employees in a voting capacity to Boards that receive County funding. AMS Memo at p. 5.

Discussion:

For purposes of this discussion, we will use the term “CAHSD employee(s)” to refer to employees in CAHSD’s VPIS division which oversees and administers County domestic violence residential and nonresidential programs, but also to include any other CAHSD employees whose job functions are impacted by the DVOB’s policy and funding recommendations. The analysis will focus on conflicts of interest that would arise as a result of CAHSD employee(s) serving on the DVOB as board members. The DVOB is a County Board with significant responsibilities and is tasked with submission of a comprehensive plan which can only be amended by a ¾ths vote of the BCC. The DVOB is a County Board, and its board members are covered by the County Ethics Code. While there is no prohibition against an appointment of a County employee to a County board, there are Sections of the County Ethics Code applying to board members that would need to be considered when a CAHSD employee is serving as a DVOB Board member.

The Ethics Commission has generally cautioned against the practice of County board service by County employees because several provisions of the Ethics Code are implicated with such service. When a County employee is being contemplated for appointment to a County Board, the Ethics Commission has recommended that it be consulted for an ethics opinion prior to appointment. *See* INQ 16-03.

Voting Conflicts:

Ethics Code at Section 2-11.1(v) addresses voting conflicts for County board members. It provides that voting conflicts would occur if: 1) the board member will be directly affected by the action of the board on which the member serves; and 2) The board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, **employee**, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor. In order for a voting conflict to exist, both prongs of section (v) must be met. *See* RQO 07-49 and INQ 11-14. Thus, voting conflicts under Section (v) of the County Ethics code would arise when the board member has an enumerated relationship with persons or entities appearing before the board on which the member serves and if the board member will be directly affected by the action of the board. *See* INQ 20-74

With respect to a CAHSD employee serving as a DVOB board member, he or she would have an enumerated relationship as an employee of the department that appears before the DVOB both to provide subject matter expertise and to make recommendations to the board regarding domestic violence policy and funding which the DVOB is responsible for overseeing. In instances such as this, the COE has opined that such service creates conflicts of interest because as a DVOB board member, the employee would have to make recommendations regarding CAHSD policies and funding which would impact the employee’s position at CAHSD. In other words, because the CAHSD employee would have contact with the same community of persons in both capacities, and because the functions of CAHSD and the DVOB are inextricably connected, then decisions or recommendations made by DVOB is likely to impact

the employee's work at CAHSD. See INQ 04-127 and 15-189, INQ 20-74.¹⁶ See County Ethics Code Section 2-11.1(v). *See also*, RQO 06-52 and INQ 14-136.

Exploitation of Official Position

Section 2-11.1(g) of the County Ethics Code prohibits board members from using their official position to secure special privileges or exemptions for themselves or others. As discussed above, the functions of CAHSD and the DVOB are closely connected, and policy and funding recommendations made by DVOB may impact CAHSD employees financially. Exploitation of official position could occur where the CAHSD employee's concurrent service as a DVOB board member would create conflicts of interest between the employee's duty to the Board and benefits deriving to him or her as a result of the impact of DVOB on CAHSD's budget and operations. *See* INQ 16-03.¹⁷

Conflicting Employment

Section 2-11.1(j) prohibits County board members from engaging in employment outside of board responsibilities that would impair the Board member's independence of judgment in the performance of his or her public duties to the County. The COE has previously identified several factors that are indicative of potential conflicts between a County board member's public duties and to his/her other employer: This includes but is not limited to employment that is related to the board member's public position; that consists of work that is similar to work performed by the board on which the board member serves; that the employment is likely to place the board member in situations in which private economic considerations may override the faithful discharge of his/her public responsibilities; and where as a board member would have to deal in his or her County employment with any issue that could foreseeably be addressed by the member's board. Consequently, working as a CAHSD employee while concurrently serving as a DVOB board member would constitute conflicting employment. *See* INQ 14-36.¹⁸

Prohibited Appearances

Section 2-11.1(m)(2) prohibits board members from appearing before the County Board or agency on which he or she serves, either directly or through an associate. In this instance

¹⁶ In INQ 15-189, the Ethics Commission opined that a Juvenile Services Department (JSD) employee should not serve as a member of the Miami-Dade Economic Advocacy Trust (MDEAT) because, as an MDEAT member, the employee would have to make funding recommendations regarding MDEAT programs that receive referrals from JSD. As such, MDEAT funding and program recommendations might impact the JSD employee's position within that department.

¹⁷ In INQ 16-03, the Ethics Commission, in keeping with other ethics opinions cautioned against the practice of County board service by County employees because several provisions of the Ethics Code are implicated with such service. When a County employee is being contemplated for appointment to a County Board, the Ethics Commission has recommended that it be consulted for an ethics opinion.

¹⁸ In INQ 14-36, the Ethics Commission Determined that County advisory board member would be prohibited by Section 2-11.1(j) of the County Ethics Code would prohibit him from engaging in employment, which would impair his independence of judgment in the performance of his public duties.

CAHSD employees appear before the DVOB at meetings and provide subject matter expertise and recommendation which the Board uses to perform its duties. Consequently, a prohibited conflict of interest would exist if CAHSD employees served as DVOB board members when they would also have to appear before the board and on matters that would impact CAHSD and VPIS operations and funding. *See* INQ 18-71.

Opinion:

Based on the facts presented to the COE discussed above, we concur with the OMB and ACM that that CASHD employee(s)' service as board members on the DVOB would create prohibited conflicts of interest under the County ethics Code, and therefore conclude that CAHSD employees should not be appointed to serve on the DVOB.

We also note that other provisions in State law also apply to board members, i.e., the Sunshine Law at Sec. 286.011, Fla. Stat., prohibits board members from discussing board business except at a duly noticed public meeting where the public is invited, and minutes are taken; and the Code of Ethics for Public Officers & Employees at Fla. Stat. Chapter 112. For additional information on state law, you may contact the Florida Ethics Commission at www.ethics.state.fl.us

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.