



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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

**FROM:** Loressa Felix, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2021-57, Voting Conflict, §2-11.1(d)

**DATE:** March 31, 2021

**CC:** All COE Legal Staff

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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 2021-C.

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 2021-C, recommending, "[a]uthorization to negotiate and execute contract renewals with 57 providers identified herein, to deliver high-quality after-school programming for 3,798 middle and high school youth and summer programming for 2,492 middle and high school youth, in a total amount not to exceed \$14,451,841.00, each for a term of 12 months, commencing August 1, 2021, and ending July 31, 2022, for year-round and school-year programs, with one remaining 12-month renewal, subject to annual funding appropriations," will be considered at an upcoming meeting of TCT board.

The Children's Trust provides funding for after-school programs and summer camps for middle and high school youth (grades 6-12) in inclusive and specialty disability programs. Inclusive programs engage 10 percent or more youth with disabilities. School-year programs engage youth for at least 50 days over no less than 36 weeks, with a minimum of 150 individual contact hours over the school year. Year-round programs offer both after-school and summer activities.

Programs follow a structured schedule of activities to support academic success, social-emotional learning (SEL) and skills-building in one or more specialized areas. The specialized areas include arts, STEM (science, technology, engineering, math), civic engagement, sports, job

training/coaching, entrepreneurship and/or college readiness. Many programs also include family engagement activities.

The following providers are recommended for renewal:

<b>Agency</b>	<b>Amount Not to Exceed</b>
<ul style="list-style-type: none"> <li>Bullet points denote subcontractors</li> </ul>	
Abundant Living Citi Church, Inc.	\$352,410.00
Adults Mankind Organization, Inc.	\$164,248.00
<ul style="list-style-type: none"> <li>Community Coalition</li> </ul>	
Ayuda, Inc.	\$257,904.00
Barry University	\$274,208.00
Be Strong International, Inc.	\$200,000.00
Branches, Inc.	\$244,170.00
Boys & Girls Clubs of Miami-Dade, Inc.	\$512,725.00
Casa Valentina, Inc.	\$195,262.00
City of Hialeah	\$375,000.00
City of Homestead	\$195,811.00
<ul style="list-style-type: none"> <li>Start Off Smart, Inc. (SOS)</li> </ul>	
City of Miami Beach	\$371,089.00
City of Miami Gardens	\$125,240.00
City of North Miami Beach	\$98,975.00
CMB Visions Unlimited, Inc.	\$248,037.00
Coalition of Florida Farmworker Organizations, Inc.	\$146,841.00
Concerned African Women, Inc.	\$193,418.00
Easter Seals South Florida, Inc.	\$504,019.00
Educate Tomorrow	\$285,600.00
Empowering Youth, Inc.	\$295,680.00
Family & Children Faith Coalition, Inc.	\$499,800.00
Family Action Network Movement, Inc. (FANM)	\$80,511.00
Federation of Families, Miami-Dade Chapter, Inc.	\$285,280.00
<b>FIU Board of Trustees (School of Education and Human Development)</b>	\$225,000.00
Florida Film Institute, Inc.	\$161,927.00
Foundation of Community Assistance and Leadership, Inc. (FOCAL)	\$162,346.00
Gang Alternative, Inc.	\$336,391.00
Greater Miami Youth for Christ, Inc.	\$187,434.00
Greater Miami Youth Symphony of Dade County, Florida, Inc.	\$195,009.00
Guitars Over Guns Organization, Inc.	\$302,634.00
Haitian Neighborhood Center, Sant La	\$172,800.00
<ul style="list-style-type: none"> <li>Prosperity Social and Community Development Group</li> </ul>	
Kids Learning Center of South Dade III, Inc.	\$156,871.00

<b>Agency</b>	<b>Amount Not to Exceed</b>
<ul style="list-style-type: none"> <li>Bullet points denote subcontractors</li> </ul>	
Kingdom Academy, Inc.	\$186,208.00
Leadership Learning Center at Saint John Bosco, Inc	\$384,913.00
Mexican American Council, Inc.	\$351,545.00
Miami Children's Initiative, Inc.	\$162,168.00
Miami Dade County (Parks, Recreation and Open Spaces)	\$416,533.00
Miami Dade County (Community Action and Human Services Department)	\$179,823.00
Miami Dance Project, Inc.	\$195,858.00
Miami Music Project, Inc.	\$225,848.00
MUSICALL, Inc.	\$55,872.00
OIC of South Florida, Inc.	\$189,000.00
Opa-Locka Community Development Corporation, Inc. <ul style="list-style-type: none"> <li>Florida Education Fund</li> </ul>	\$457,043.00
Overtown Youth Center, Inc.	\$271,040.00
Parks Foundation of Miami-Dade, Inc. <ul style="list-style-type: none"> <li>Miami-Dade County</li> </ul>	\$364,434.00
Peace CDC, Inc.	\$195,750.00
Prosperity Social & Community Development Group, Inc.	\$75,600.00
Recapturing the Vision International, Inc.	\$181,782.00
Shepherd of God Christian Academy, Corp.	\$115,033.00
The Arc of South Florida	\$656,565.00
The Children's Village d.b.a. The Resource Room	\$211,511.00
The Liberty City Optimist Club of Florida, Inc.	\$113,893.00
The Motivational Edge, Inc	\$66,780.00
Tiger and Dragon Group, Inc.	\$63,676.00
Touching Miami with Love Ministries, Inc.	\$433,926.00
United Cerebral Palsy Association of Miami, Inc.	\$240,673.00
Urgent, Inc.	\$592,207.00
World Literacy Crusade of Florida, Inc.	\$257,520.00

You inquire on behalf of TCT board members Dr. Daniel Bagner and Danielle Cohen Higgins 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 2021-C.

You make this inquiry, on behalf of board member Dr. Daniel Bagner, in light of the relationship formed between TCT and Florida International University (FIU), specifically program provider FIU Board of Trustees, School of Education and Human Development (highlighted above in red); and, on behalf of board member Danielle Cohen Higgins, in light of the relationship formed between TCT and Miami-Dade County, specifically program provider departments, Parks

Recreation and Open Spaces and Community Action and Human Services (highlighted above in red).

1. Dr. Daniel Bagner is employed by Florida International University as the Director of the Early Childhood Behavior Lab and Professor of Psychology. Research in the lab is conducted under the auspices of the Center for Children and Families and the Department of Psychology at Florida International University, as well as support from the National Institutes of Health. The School of Education and Human Development is the principal which includes the Department of Psychology, in which Dr. Bagner works and conducts his research on behalf of the Early Childhood Behavior Lab. One of the provider contracts is with the FIU Board of Trustees, School of Education and Human Development.
2. Danielle Cohen Higgins is a Miami-Dade County Commissioner for District 8. There is no direct relation to programs being funded. Two of the provider contracts are with the Miami-Dade County, specifically the departments of Parks Recreation and Open Spaces and Community Action and Human Services.

#### 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."

TCT is also bound by the Ethics Code (See RQO 19-06). 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; or, 3) the board member might, directly or indirectly, profit or be enhanced by the board action.<sup>1</sup> *See* RQO15-04.

With regard to board member Danielle Cohen Higgins, there are no facts indicating that Commissioner Cohen Higgins will be receiving a direct financial benefit from the board action, therefore, a conflict analysis under TCT rules is not applicable.

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<sup>1</sup> 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.

Additionally, as stated above, an automatic voting conflict arises when a board member has an enumerated relationship with the entity affected by the Resolution. In this instance while Commissioner Cohen Higgins does have an enumerated relationship with Miami-Dade County she does not have such a relationship with the individual departments receiving the funding.

There are no facts indicating that Commissioner Cohen Higgins may profit or be enhanced by the board action authorizing the contract renewal. *See* INQ 20-46; INQ 20-47; and INQ 20-48. TCT is not providing direct funding the Board of County Commissioners instead the funding is allocated to support a common objective - providing after-school and summer camps to the youth throughout the County. Therefore, there is no unique impact which would create a voting conflict.

By contrast, board member Dr. Daniel Bagner is employed by Florida International University as the Director of the Early Childhood Behavior Lab and Professor of Psychology, which both fall under the umbrella of the School of Education and Human Development. As the School of Education and Human Development is a provider receiving funding under this contract, Dr. Bagner has an enumerated relationship with an entity *affected* by the Resolution seemingly creating a voting conflict.

However, the Ethics Commission has previously opined that an elected official could vote on an overall budget item, even if the budget provided funding to an entity that employed the elected official (board member), if the funding allocation was very minor compared to the overall budget, thus creating the "minor budget allocation" exception to the elected official voting conflict prohibition contained in the Ethics Code. *See* RQO 19-04 citing INQ 14-212 (the informal guidance provided that an elected official employed as the Executive Director of a community-based organization (CBO) could vote on an overall budget item, even though the budget provided funding for the employing entity. The official's employer was an entity "which would be or might be directly or indirectly affected by any action" of the elected body inasmuch as it was receiving a funding allocation.)

In applying the minor budget allocation exception, Dr. Bagner would be permitted to vote on Resolution C as the funding allocation is very minor compared to the overall budget and the allocation is not narrowly focused on the employing and affected entity. *See* RQO 19-04.

#### Opinion:

Under the details provided concerning Resolution C, we do not find a conflict of interest prohibiting Dr. Bagner and Commissioner Cohen Higgins from voting on this Resolution.

While board member Dr. Daniel Bagner is an employee of FIU- Early Childhood Behavior Lab and Psychology Department his participation falls within the minor budget allocation exception, which permits him an exception to the voting conflict prohibition, as the funding allocation is very minor when compared to the overall budget and such allocation is not narrowly focused on his employing and affected entity.

Board member Danielle Cohen Higgins does not have an enumerated relationship with program provider departments, Parks Recreation and Open Spaces and Community Action and Human Services and, therefore, no voting conflict. Commissioner Cohen Higgins will not profit (directly or indirectly) or be enhanced by this vote nor will she receive a special benefit in her capacity as a member of governmental entity which partners with TCT to provide after-school and summer camps to the youth within Miami-Dade County. Commissioner Cohen Higgins' vote and participation with regard to this Resolution will not raise the perception of an appearance of impropriety.

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.