



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-58

DATE: April 2, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a possible voting conflict of interest by The Children's Trust board members on Resolution 2021-B (K-5 Renewals).

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 of TCT 2021-B entitled, "Authorization to negotiate and execute contract renewals with 82 providers identified herein, to deliver high-quality after-school programming for 12,257 elementary school children and summer programming for 13,185 elementary school children, in a total amount not to exceed \$36,018,147.00, 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 the TCT board.

The TCT provides funding for after-school programs and summer camps for elementary school children (grades K-5) in inclusive and specialty disability programs. Programs follow a structured schedule of activities to support academic success, social-emotional learning (SEL), and physical fitness. This Resolution seeks funding to renew the contract of 82 providers of after-school programs and summer camps that are offering high-quality, individualized services to meet families' needs

You inquire on behalf of two 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 2021-B. You make this inquiry in light of the members' relationships with various entities that will receive funding through this Resolution:

- 1) Daniel Bagner works for Florida International University (FIU) Center for Children and Families (CCF). This Resolution will provide funding for two contracts with FIU. One of the contracts will provide funding to the College of Engineering and Computing. **The second contract will provide funding to the Center for Children and Families (CCF).**
- 2) Danielle Cohen Higgins is a Miami-Dade County Commissioner. This Resolution will provide funding to the Miami Dade County- Parks, Recreation and Open Spaces Department (PROS). There is no direct relationship between Commissioner Cohen Higgins and the programs being funded.

Analysis

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 CT 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.

See RQO15-04.

Dr. Daniel Bagner

As stated above, an automatic voting conflict arises when the board member has an enumerated relationship with the entity affected by the Resolution. In this instance, Dr. Bagner is employed at FIU CCF, which will receive funding, in an amount not to exceed 1,042,906.00, through this Resolution. As FIU CCF is a provider receiving funding under this contract, Dr. Bagner has an enumerated relationship with an entity *affected* by the Resolution.¹

In addition, we 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).

Consequently, FIU CCF, which employs Dr. Bagner, is an entity affected by the allocation of funds under the Resolution, and Dr. Bagner would thus be barred from participating and voting on this matter. See RQO 19-044, and INQs 20-38, 20-50, 20-51, 20- 53, 20-106.

Commissioner Cohen Higgins

As to Commissioner Cohen Higgins, although she is an officer/official of Miami-Dade County, she "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.

¹ 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. We do not believe that the minor budget allocation exception applies in this scenario, as FIU CCF will receive funding in an amount not to exceed 1,042,906.00, through this Resolution. See RQO 19-04.

Additionally, TCT is not providing direct funding the Board of County Commissioners instead the funding is allocated to the County's Department of Parks, Recreation and Public Spaces (PROS) to support after school programs and summer camps. 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.

Conclusion

Under the details provided concerning the Resolution authorizing TCT to negotiate and execute contract renewals with 82 providers -including Dr. Bagner's employer, FIU CCF, Dr. Bagner has an enumerated relationship with an entity affected by the Resolution. Therefore, he would have a voting conflict under Section 2-11.1(d) of the Code of Ethics.

With respect to Commissioner Cohen Higgins, although she has an enumerated relationship with Miami-Dade County and this Resolution of TCT authorizes funding to 82 providers including the County's Department of Parks, Recreation and Public Spaces (PROS) to support after school programs and summer camps, it does not appear that Commissioner Cohen Higgins will profit or be enhanced by this vote nor will a special benefit come to either of her by virtue of her relationships with Miami-Dade County. Also, based on the purpose and goal of TCT supported after-school programs and participation objectives of the entities involved, Commissioner Cohen Higgins' voting and participation on this Resolution would not raise the perception of an appearance of impropriety.

This opinion is limited to the facts as you presented them to the COE 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.