



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

FROM: Gilma Diaz-Greco
Staff Attorney

SUBJECT: INQ 2021-59, Voting Conflict, §2-11.1(d)

DATE: April 1, 2021

CC: COE 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 a The Children's Trust Board member on "Resolution 2021-E Reading Enhancement".

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-E-Reading Enhancement, will be considered at an upcoming meeting of TCT board. This resolution is entitled "Authorization to negotiate and execute a contract renewal with Florida International University Board of Trustees (FIU) for reading enhancement services, in a total amount not to exceed \$882,168.00, for a term of 12 months, commencing October 1, 2021, and ending September 30, 2022, with two remaining 12-month renewals, subject to annual funding appropriations."

The resolution seeks to renew a contract (the Contract) between the TCT and Florida International University Board of Trustees (FIU BOT) for reading enhancement services provided by FIU's Center for Reading Explorers (Reading Explore's Program),¹ one of the programs administered by

¹ FIU Center for Children and Families manages and operates in partnership with Nova Southeastern University, the Reading Explorers Program which offers services funded by The Children's Trust to providers and families to help improve foundational reading and reading comprehension skills in children. <https://ccf.fiu.edu/summer-programs/reading-explorers/index.html>

FIU's Center for Children and Families' (C&F Center).² The Contract was first approved on February 19, 2019, when the TCT board approved the funding recommendation for FIU to provide TCT funded after school and summer program reading enhancement services to young children in Miami-Dade County.

You inquire on behalf of TCT board member Daniel Bagner, PhD., whether he would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or the TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2021-E- Reading Enhancement. You make this inquiry in light of the relationship formed between FIU's BOT, its C&F Center which employs Mr. Bagner, and the TCT.

Dr. Bagner is employed at FIU's C&F Center as a professor; Interim Director of Clinical Training; and Program Director, Clinical Science Psychology. His job duties involve research in the areas of early childhood developmental delay and behavior problems; they do not, however, include any involvement in the C&F's Reading Explorers program. You have advised the COE that Dr. Bagner's salary at FIU is not covered or impacted by the TCT funding for the Reading Explorers program. You further advise that ten percent (10%) of the total Contract amount between the TCT and FIU BOT goes to research programs through the Office of Research at FIU which distributes the funds to different departments within FIU (mainly for infrastructure and administrative costs) but does not cover or impact Dr. Bagner's salary.

Discussion:

The COE 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, in relevant part, 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.³ The policy also provides that board members will act in such a manner to avoid the appearance of impropriety.⁴ TCT bylaws state that 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".⁵

After reviewing the information provided, there are no facts indicating that Dr. Bagner will receive a direct financial benefit from the board's action. This is because, Dr. Bagner's work at C&F Center does not include any involvement in the Reading Explorer program; his salary is not impacted by the Contract; and the 10% which is allocated to the Office of Research at FIU is used for general infrastructure and administrative costs that do not directly have any financial impact for Dr. Bagner. Consequently, a conflict analysis under the TCT rules is not applicable.

² TCT contracts with various agencies, including Florida International University's Center for Children and Families. [Reading Explorers | Center for Children and Families | Florida International University \(fiu.edu\)](https://www.fiu.edu/cenf)

³ TCT Conflict of Interest and Code of Ethics Policy Section III (A)(1).

⁴ TCT Conflict of Interest and Code of Ethics Policy Section III (D).

⁵ TCT Bylaws, Article VI.

TCT is also subject to the County Ethics Code. *See* RQO 19-06) The County Ethics Code 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.⁶ *See* RQO15-04.

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 by the C&F Center which is a recipient of funds allocated under the Resolution. However, his job duties at the C&F center are under different programs at C&F which are unrelated to the Reading Explorer program and its funding. Furthermore, the funds distributed under the Contract covered in this Resolution do not impact or affect Dr. Bagner's salary and we have not been advised of any other facts suggesting that Dr. Bagner's would be affected or will benefit, be enhanced, or receive any unique or special benefit from this vote. *See* RQO 19-04⁷, and *See e.g.*, INQ 21-56 and INQ 20-52.

Opinion:

Under the details provided concerning the Resolution authorizing TCT to negotiate and execute a contract renewal with FIU's C&F Center's reading enhancement program, it does not appear that Dr. Bagner has a voting conflict with respect to this Resolution. While he has an enumerated relationship with the C&F, his job position is not a recipient of TCT funding and there are no other facts suggesting that he would benefit, be enhanced, or receive any special benefit from this vote.

⁶ 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.

⁷ Memorandum re RQO 19-04 sets forth a "minor allocation" exception to the voting conflict in Section 2-11.1(d) of the Ethics Code: "a [TCT member] that serves in a primary enumerated position with an entity, may vote on an overall budget item when the budget provides funding to [the]entity, if the funding allocation is very minor compared to the overall budget... However, this Resolution is not part of an overall budget item as contemplated by this exception.

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.