



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jonathan Desvergunat, Non-Voting Chairperson
Internal Services Department

Phillip G. Edwards, Esq., BCC Research Manager
Office of the Commission Auditor (OCA)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-61 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: April 6, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts: We have reviewed your memorandum dated March 17, 2021, which was prepared in connection with the Appointment of the Selection Committee for the Affordable Housing Trust Fund Board Request for Proposals for Revolving Loan Fund Administrator - RFP No. 01655. The memorandum was prepared in connection with Resolution No. R-449-14, directing the Office of the Commission Auditor (OCA) to conduct background checks on members serving on evaluation/selection committees.

The memorandum noted that three members of the selection committee made disclosures on their Neutrality/Disclosure Form and/or resumé that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “(1) Daniel Howe, H.O.P.E, Inc., indicated on his Neutrality/Disclosure Form that he and his spouse, Lauren Howe, have checking and savings accounts with Dade County Federal Credit Union. Mr. Howe also indicated that his children, Michael and Michelle Howe, have savings accounts with Dade County Federal Credit Union. Dade County Federal Credit Union is the sole respondent to the solicitation. (2) Tangie White, Public Housing and Community Development Department, indicated on her Neutrality/Disclosure Form that she has a car loan and a bank account with Dade County Federal Credit Union, the solicitation’s sole respondent. (3) Jonathan Desvergunat, Internal Services Department,

indicated on his Neutrality/Disclosure Form that he has bank accounts with Dade County Federal Credit Union, the solicitation's sole respondent."

It is our understanding that Dade County Federal Credit Union (DCFCU) is the sole respondent to this RFP.

We conferred with Mr. Howe, who was appointed to serve as an alternate for this selection committee. He is the Vice President/Fair Lending Initiative Director, at H.O.P.E, Inc. He is not responsible for maintaining any bank accounts or banking relationships at H.O.P.E, Inc. Mr. Howe confirmed that he and his spouse, Lauren Howe have checking and savings accounts with DCFCU. He also confirmed that his children, Michael and Michelle Howe, have savings accounts with DCFCU. He is not an officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stockholder, bondholder, debtor, or creditor of DCFCU. Neither Mr. Howe nor his immediate family members will receive any type of direct financial benefit as a result of this solicitation. Neither Mr. Howe nor his immediate family members have any pending loan applications with DCFCU. They also do not plan on submitting any loan application to DCFCU while Mr. Howe serves on this selection committee. He does not have any ownership interest in DCFCU. He does not have any business, close social, or other relationship with any employee at the company. Mr. Howe believes he can be fair and impartial when evaluating the sole respondent to this solicitation.

We also conferred with Ms. White, who was appointed to serve as one of three non-voting, technical advisors to this selection committee. She is Chief at Miami-Dade County Department of Public Housing and Community Development (PHCD). She confirmed that she has a car loan and a bank account with DCFCU. She advised that she is not currently renegotiating the terms of the loan or asking for any type of forbearance from DCFCU at this time. She will not receive any type of direct financial benefit as a result of this solicitation. She does not have any pending loan applications with DCFCU, nor does she plan on submitting any loan application to DCFCU while she serves on this selection committee. She does not have any ownership interest in DCFCU. She does not have any business, close social, or other relationship with any employee at the company. She believes she can be fair and impartial when evaluating the sole respondent to this project.

Finally, we conferred with Mr. Desvergunat. He will serve as the ISD non-voting chairperson of this selection committee. Mr. Desvergunat has several accounts with DCFCU, including a credit card account. He advised that he however, maintains a zero balance on the credit card. He stated that he is not currently renegotiating the terms of the credit card nor is he asking for any type of forbearance from DCFCU. He will not receive any type of direct financial benefit as a result of this solicitation. He does not have any pending loan applications with DCFCU, nor does he plan on submitting any loan application to DCFCU while serving as the non-voting chairperson of this selection committee. He does not have any ownership interest in DCFCU. He does not have any business, close social, or other relationship with any employee at the company. Mr. Desvergunat believes he can be fair and impartial when evaluating the sole respondent to this project.

Discussion: This agency conducts reviews of these issues under the County Ethics Code, which governs conflicts by members of County advisory and quasi-judicial boards. We also consider whether there is an appearance of impropriety created and make recommendations based on R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

Specifically, Section 2-11.1(v) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and 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) stock holder, bondholder, debtor or creditor.

It does not appear that any of the three individuals have a voting conflict of interest under Section (v) of the County Ethics Code. Mr. Howe, who will serve as an alternate to this selection committee, does not have a voting conflict under Section (v) of the County Ethics Code because he will not be directly affected by the vote and he does not currently have any of the enumerated relationships with any entity affected by the vote.

As to Ms. White, she does not have a voting conflict under Section 2-11.1(v) since as technical advisor, she will not vote. *See* INQ 18-229, and INQ 17- 174.

Similarly, there is no voting conflict as to Mr. Desvergunat under Section 2-11.1(v), since as the non-voting chairperson of the selection committee, he will not vote. *See* INQ 18-229, and INQ 17- 174.

Notably, even if Ms. White and Mr. Desvergunat were voting members of the committee, they would not have any voting conflict under Section 2-11.1(v) of the Ethics Code because while they arguably have an enumerated, debtor-creditor relationship with DCFCU, neither Ms. White nor Mr. Desvergunat would be directly affected by the vote on this solicitation.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, this agency also opines concerning whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an appointed selection committee. *See* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

As noted above, the OCA memorandum regarding the selection committee for this solicitation stated that three individuals made disclosures that they had bank accounts and/or credit cards and/or car loans with DCFCU, the sole respondent to this solicitation. It does not appear that the Ethics Commission has provided any prior guidance on this specific issue, however there is one prior informal opinion that might be instructive in this scenario.

In INQ 17-193, the Ethics Commission considered whether the Assistant Director for the Homeless Trust could serve as the non-voting chairperson of a selection committee, where his prior employer, was the sole respondent to that solicitation. The opinion noted that the Assistant Director's service on the selection committee would not violate the Ethics Code

since it had been more than two years since his employment with the respondent. It also noted that there was no voting conflict under Section (v) because as the non-voting chairperson, he would not vote. Importantly, the opinion noted that “while there might be some concern over a possible appearance of a conflict in a matter in which he was serving in regard to a **competitive** procurement involving respondent, the fact that he will not be serving in such a situation leads me to discount any possibility of such an appearance.” The Ethics Commission stated that the Assistant Director may serve on that selection committee even though his former employer, had responded to that solicitation, because he will serve on a committee that involves a renewal contract in which **there was no competitor**.

Similar to INQ 17-193, DCFCU is the sole respondent to this solicitation. There is no competitor. The disclosures made by the three individuals regarding DCFCU would not create a conflict under the Ethics Code. The three individuals have no ownership interest in DCFCU; they are not currently seeking any type of loan, forbearance, or financial benefit from DCFCU; and they do not have any business, or close social relationship with current employees at the entity. As to Ms. White and Mr. Desvergunat, they are also both non-voting members of the selection committee.

Opinion: Consequently, Mr. Howe, Ms. White, and Mr. Desvergunat do not have a conflict of interest under the Ethics Code that would prevent them from serving in their appointed roles relating to this solicitation, and their service would not create an appearance of impropriety or detract from the County’s conducting a fair and objective evaluation for this project. *See* 17-193. However, the Internal Services Department’s Procurement Management Services Division may consider whether these three individuals should serve in their select roles, as perhaps the most sensitive pressure point within County government, the procurement process, has always maintained stronger ethical standards than the minimum provided under the Ethics Code. *See* INQ 17-200

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.

