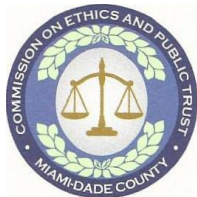


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 26, 2021

Via email only to expedite delivery:
fernandezalexj@gmail.com

Alejandro J. Fernandez, Member
Miami Beach Planning Board
1700 Convention Center Drive
Miami Beach, Florida, 33139

Re: INQ 2021-71, Section 2-11.1(v), Voting Conflicts for Board Members

Dear Mr. Fernandez:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a possible voting conflict of interest. The matter before you as a member of the Miami Beach Planning Board concerns a proposed finding by the board that the North Beach Community Redevelopment Agency's ("CRA") Redevelopment Plan is in Conformance with the Miami Beach Comprehensive Plan.

Facts:

You are employed at the Office of Miami-Dade Commissioner Rebeca Sosa as a Senior Communications/Legislative Aide. Your job duties include assisting the Commissioner and staff with legislation and policy and generating communications work product. Miami Beach is not included within County District 6.

You also serve as a member of the Miami Beach Planning Board ("Board"). The Board serves as a local planning agency pursuant to the State and the Local Government Comprehensive Planning and Land Development Regulations Act (F.S. ch. 163). The specific duties and powers of the Board are detailed in Sections 118.51 to 118.53 of the Miami Beach Code. Notably, the Board may consider applications pertaining to conditional use permits, amendments to these land development regulations, change of zoning district boundaries and comprehensive plan amendments and future land use map changes.

In July 2020, the Board of County Commissioners (BCC) voted to delegate to Miami Beach the ability to create a CRA with the initial sole power to prepare and adopt a redevelopment plan for

the North Beach area. The adopted redevelopment plan will be submitted to County staff for review and thereafter the plan will then be considered and voted upon by the BCC.

This week, the Board will be considering and voting upon a proposed finding that the CRA's Redevelopment Plan is in conformance with the Miami Beach Comprehensive Plan. This vote is a predicate to the plan's submission to the County and the BCC's ultimate consideration and vote on the same.

Additionally, there will likely be additional items that will be considered and voted upon by the BCC in order to effectuate the CRA, including legislation establishing the trust fund and an interlocal cooperation agreement between the County, Miami Beach, and the CRA.

Issue:

Whether a conflict of interest exists regarding your consideration and vote on a proposed finding that the North Beach CRA's Redevelopment Plan is in conformance with the Miami Beach Comprehensive Plan when this finding is predicate to the BCC's future consideration and vote on other aspects of the CRA.

Discussion:

Section 2-11.1(v) of the Ethics Code prohibits municipal board members from voting on matters involving entities in which they have any of the following relationships: officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor, if they would be directly affected by the vote.

You do not hold an enumerated relationship with the proposed North Beach CRA nor is there any evidence that you will be directly affected by the vote. While you are a County employee, the County is not appearing before the Board.

Accordingly, under Section 2-11.1(v) of the Ethics Code, you do not have a voting conflict as regards a proposed finding that the North Beach CRA's Redevelopment Plan is in conformance with the Miami Beach Comprehensive Plan.

In INQ 2021-01, you were advised that Section 2-11.1(j) of the Ethics Code, relating to conflicting employment, did not prohibit a County Commission staff member from serving on a municipal board. Nevertheless, because of your position on the staff of an elected County Commissioner, it was recommended that you should not deal in your County position with any issue that could foreseeably come before you as a member of the municipal board and vice versa. Because of the nature of your employment as County Commission staff member, you were encouraged to be cautious regarding Board votes on matters involving the County.

Arguably, the matter relating to the North Beach CRA's Redevelopment Plan that is predicate to the BCC's future consideration and vote on other aspects of the CRA, could be characterized as matter involving the County.

The Ethics Commission has previously cautioned elected officials when considering matters where there is no per se voting conflict but where there may be a more general “appearance of impropriety” that should govern conduct.¹ In those instances, while opining that the elected officials did not have voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code that prohibited their consideration and vote, the Ethics Commission advised that:

The County’s Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address “appearance of impropriety” issues that should guide the actions of all public servants, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business.

Conclusion:

Applying the plain language of the Ethics Code and the rationale underlying the Ethics Commission’s conclusions in the opinions cited herein, you would not have a *per se* voting conflict pursuant to Section 2-11.1 (v) of the Ethics Code that would prohibit your consideration and vote on a proposed finding that the North Beach CRA’s Redevelopment Plan is in conformance with the Miami Beach Comprehensive Plan.

However, in abundance of caution, you are urged to abstain from voting on the matter and you may wish to do the same on future matters involving the North Beach CRA, again, because the CRA will be the subject of future consideration and votes by the BCC.

This opinion only construes the Miami-Dade Ethics Code, and it is based on the facts as you have presented them to the Ethics Commission. Any comment regarding other state or local laws is included for informational purposes only.

We hope that this opinion is of assistance and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,



Jose J. Arrojo
Executive Director

¹ See generally RQO 12-03; INQ 13-148; and INQ 2021-69 (Ethics Commission encouraged elected officials to consider appearances of impropriety when voting on matters affecting parties that the official had prior business relationships with, even though there was no per se voting conflict).

cc: Nick Kallergis, Esq., First Assistant City Attorney
All COE Attorneys

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.