



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-86, Voting Conflict, §2-11.1(d)

DATE: May 28, 2021

CC: All COE Legal 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 The Children's Trust board members on Resolution 2020-XX - Catalyst Miami.

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 2020-XX, recommending, "[a]uthorization to negotiate and execute a funder collaboration contract renewal with Catalyst Miami, Inc., for Future Bound Miami, a Children's Savings Accounts program, in a total amount not to exceed \$135,000.00 for a term of 12 months commencing October 1, 2021, and ending September 30, 2022," will be considered at an upcoming meeting of TCT board.

Future Bound Miami, the Children's Savings Accounts (CSA) program led by Catalyst Miami, Inc., addresses the economic challenges facing Miami-Dade County¹ and is a crucial strategy for postsecondary attainment with two program goals:

¹ Miami-Dade County is home to a growing population of low- to moderate-income families. The middle class is steadily declining, and the gap between high- and low-wealth individuals is widening, with the wealthiest fifth of the population earning \$176,876.00 in 2013, versus \$8,829.00 for the lowest fifth. Postsecondary attainment leads to higher earning potential, which can decrease the income gap in Miami-Dade County. There is strong evidence suggesting a correlation between postsecondary savings and postsecondary graduation. Research indicates low- and moderate-income children with postsecondary savings of just \$500.00 or less are three times more likely to enroll in college and four times more likely to graduate.

1. Educational Achievement – Increase postsecondary readiness among students by fostering a postsecondary-bound identity that will help reduce the achievement gap.
2. Financial Capability – Help low-and moderate-wealth families lead healthier financial lives through financial education and sound savings habits among children and parents.

Upon entering kindergarten, each child enrolled in Miami-Dade County Public Schools (M-DCPS) within the boundaries of the City of Miami, will automatically gain access to a no-fee savings account in their name. Parents activate the Future Bound Miami account by accessing the M-DCPS Parent Portal during the activation periods. Within 48 hours of activating the account, children receive an initial seed incentive of \$25 in their account, or \$50 for children who qualify for free or reduced lunch. Through this platform, parents, family members, and friends can make deposits directly into the savings account; however, only the child can access the account funds upon graduation from high school.

The planning process for the CSA implementation plan involved coordination with M-DCPS, government officials, community organizations, and various parent focus groups. As a result, Future Bound Miami was launched in 30 M-DCPS elementary schools within the City of Miami with the ultimate goal to expand to a countywide M-DCPS program by 2025.²

You inquire on behalf of several 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 2020-XX. You make this inquiry in light of the members' relationships with various entities that help to facilitate the Future Bound Miami Program, which receives funding through this Resolution:

- 1) Magaly Abrahante works for M-DCPS. She serves as an Assistant Superintendent responsible for early childhood programs, exceptional student education (ESE), and Title 1 programs. While the program benefits children who attend M-DCPS, Dr. Abrahante has no oversight over the program nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project. It will provide in-kind contributions secured in support of the project.
- 2) Tiombe Bisa Kendrick-Dunn is employed by M-DCPS as a school psychologist and is the Chairperson for Professional Growth & Development at M-DCPS. While the program benefits children who attend M-DCPS, Dr. Kendrick-Dunn has no oversight over the program nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project. It will provide in-kind contributions secured in support of the project.
- 3) Richard Dunn works part-time for M-DCPS. While the program benefits children who attend M-DCPS, Pastor Dunn has no oversight over the program nor will he receive a benefit from

² The Children's Trust's investment of \$135,000.00 supports the program's infrastructure. It leverages nearly \$820,000.00 from the City of Miami, Miami-Dade County, the Perez Family Foundation, and United Way of Miami Dade County in direct funding, along with approximately \$1,480,000.00 in in-kind contributions secured by the consortium. Consortium partners include Catalyst Miami, Inc., The Children's Trust, the City of Miami, The Children's Movement of Florida, M-DCPS, Sant La Haitian Neighborhood Center, the United Way of Miami-Dade County, the Miami Foundation, the Health Foundation of South Florida, Junior Achievement, and EdFed (formerly the South Florida Educational Federal Credit Union).

the program. M-DCPS is a funding contributor to this project. It will provide in-kind contributions secured in support of the project.

- 4) Dorothy Bendross-Mindingall is a M-DCPS board member. While the program benefits children who attend M-DCPS, Dr. Bendross-Mindingall has no oversight over the program nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project. It will provide in-kind contributions secured in support of the project.
- 5) Commissioner Danielle Cohen Higgins is a Miami-Dade Commissioner and was appointed as a board member by the Chair of the Miami-Dade County Commissioners. While the program benefits children who attend M-DCPS and Miami-Dade County is a funding partner, Commissioner Cohen Higgins has no oversight over the program and will receive no benefit from the program.
- 6) Nelson Hincapie is the Miami-Dade County Mayor's appointee to The Children's Trust Board. While the program benefits children who attend M-DCPS and Miami-Dade County is a funding partner, Mr. Hincapie has no oversight over the program and will receive no benefit from the program.
- 7) Sandra West is the appointee for the Miami-Dade County PTA/PTSA. While the program benefits children who attend M-DCPS, Ms. West has no oversight over the program nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project. It will provide in-kind contributions secured in support of the project.
- 8) Emily Rosendo is the representative for the Student Government Association (SGA). While the program benefits children who attend M-DCPS, Ms. Rosendo has no oversight over the program nor will she receive a benefit from the program. M-DCPS is a funding contributor to this project. It will provide in-kind contributions secured in support of the project.

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."

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.³
See RQO 15-04.

An automatic voting conflict arises when the board member has a prohibited relationship with the entity *affected* by the Resolution.

In this instance, TCT board members Magaly Abrahante, Tiombe Bisa Kendrick-Dunn, Richard Dunn, and Dorothy Bendross-Mindingall are employees, officers, or board members of M-DCPS, which is a funding *contributor* to the program by providing in-kind contributions secured in support of the project as part of the consortium partners. M-DPCS is not receiving funding from this Resolution. Therefore, even though Magaly Abrahante, Tiombe Bisa Kendrick-Dunn, Richard Dunn, and Dorothy Bendross-Mindingall, are employees or officers of M-DCPS, they are “not automatically disqualified from participating in an item that would affect the governmental entity [because they 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* INQ 20-47, quoting “Government Agency Employment Relationship Exception” in Memorandum to RQO 19-04, and INQ 18-68.

Additionally, it does not appear that any of these board members has any oversight, supervision, or control over the Future Bound Miami Program, which is led by Catalyst Miami, Inc. It also does not appear that any special benefit will come to them by virtue of their relationship with M-DCPS. Therefore, they have no voting conflicts.

As to TCT board members Sandra West and Emily Rosendo, they are officers of entities affiliated with M-DCPS. While M-DCPS is a funding contributor to the program by providing in-kind contributions secured in support of the project as part of the consortium partners, M-DPCS is not receiving funding from this Resolution. Further, the PTA/PTSA and SGA, for which they respectively serve as officers, will not receive any funding through this Resolution. They do not have a prohibited enumerated relationship with Miami-Dade County; therefore, no voting conflict arises under this principle. It also does not appear that any special benefit will come to them by virtue of their relationship with M-DCPS.

³ 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.

As to Commissioner Cohen Higgins, although she is an official of Miami-Dade County, which is a funding partner for this Resolution, she too “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.

Additionally, TCT is not providing direct funding to the Board of County Commissioners on which she serves. 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.

As to TCT board member Nelson Hincapie, he does not have a prohibited enumerated relationship with Miami-Dade County; therefore, no voting conflict arises under this principle.

Moreover, none of the board members referenced herein would be affected by this vote in a matter distinct from the public generally: M-DCPS and Miami-Dade County will benefit in the agreement by way of their contribution to the overall purpose of attaining “educational achievement” and “financial capability” to students within the community.

Finally, there are no facts indicating that any of the board members referenced herein might profit or be enhanced by the board action authorizing the negotiation and execution of contracts with Catalyst Miami, Inc., for Future Bound Miami, a Children’s Savings Accounts program.

Opinion:

Under the details provided concerning this Resolution of TCT, authorizing the negotiation and execution of contracts with Catalyst Miami, Inc., for Future Bound Miami, a Children’s Savings Accounts program, it does not appear that any of the board members referenced herein will profit or be enhanced by this vote nor will a special benefit come to any of them in their capacities as employees, appointees, officers or members of their respective governmental/non-profit entities.

Also, based on the overall purpose and goal of the Future Bound Miami Program, and the participation objectives of the nonprofit organization and governmental entities involved, the members’ voting and participation would not raise the perception of an appearance of impropriety in this Resolution.

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.