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February 9, 2021

Via U.S. & Electronic Mail

Honorable Jordan Leonard
Town of Bay Harbor Islands
9665 Bay Harbor Terrace, Second Floor
Bay Harbor Islands, Florida 33154

Re: Ethics Inquiry Request, INQ 2021-23, Appointment of Town Attorney, Voting Conflict, Section 2-11.1(d) of the County Ethics Code

Dear Councilman Leonard:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of the voting conflict provisions of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance ("Ethics Code").

We respond as follows:

Facts:

You are a Councilman for the Town of Bay Harbor Islands, Florida (BHI). BHI is in the process of hiring a Town Attorney. There are several law firms currently competing for appointment. These firms include: Gray Robinson, Weiss Serota HC&B, Frank Simone, Shutts & Bowen, the Vose Law Firm, Greenspoon Marder, and Switkes & Zappala.

In the past, you have been represented in personal legal matters by attorney Joseph Geller of Greenspoon Marder. You are currently not being represented by Mr. Geller or Greenspoon Marder, have no outstanding financial obligations to him or his firm, and do not anticipate at this time that you will be retaining him or the firm for any legal matters.

Additionally, Joseph Geller currently serves as a member of the Florida House of Representatives, representing the 100th District, which includes most of Hollywood in southern Broward County and parts of northeast Miami-Dade County. Mr. Geller is term limited and will be unable to run for this seat in 2022.

You are considering running for the State House, 100th District seat in 2022 once Mr. Geller finishes his term. If you do run for his House seat, Mr. Geller may support or endorse your candidacy.

Issue:

Whether Councilman Leonard, who was previously represented by Mr. Geller of the Greenspoon Marder firm in a legal matter, and whose State House candidacy may be supported or endorsed by Mr. Geller, has a prohibited voting conflict that would preclude his participation and vote on the appointment of a Town Attorney for Bay Harbor Islands, where Mr. Geller is seeking appointment.

Discussion:

The County Ethics Code is applicable to County and municipal elected and appointed officials, employees, board members, their family members, and certain persons that transact with local government. Councilman Leonard is a municipal elected official as defined in Section 2-11.1(b)(1) of the Ethics Code.¹

As such, his participation and vote on matters before the BHI Council is governed by the voting conflict provisions contained in Section 2-11.1(d) of the Code.

Section 2-11.1(d) of the Ethics Code provides that a Councilman shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [Town Council] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official “would or might, directly or indirectly, profit or be enhanced by the action...” as opposed to the State standard contained in Section 112.3134(3)(a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure “which would inure to his or her special private gain or loss.”

¹ The Ethics Code constitutes the minimum standard of ethical conduct and behavior for all municipal officials and officers. *See* Section 2-11.1(a), Ethics Code.

In INQ 2020-97, we previously opined that there was no prohibited voting conflict that would preclude Councilman Leonard's participation or vote on the retainer of a Town Attorney, a position sought by Mr. Geller, in spite of his prior representation of the voting official. This is because there has been no evidence presented that the vote might provide the official with some benefit or advantage and with the understanding that the Ethics Code provides the minimum standard of conduct for local officials and does not address "appearance of impropriety" issues. *See also INQ 20-77* (Commissioner may vote to waive any conflicts in representation to allow for the retainer of a contract attorney to represent city in a civil action, while the attorney was representing the Commissioner in an unrelated legal matter, because there was no evidence that his vote to waive representation conflicts and to retain the attorney might provide him with some direct or indirect benefit, profit, or advantage.)

We now consider whether Mr. Geller's possible future endorsement or support of Councilman Jordan's candidacy for the State House might create a voting conflict as regards the selection of a BHI Town Attorney.

To be clear, absent an unequivocal *quid pro quo* scenario where there is an agreement to vote or not vote in support of a matter before the public board as consideration for an illegal political donation, municipal contractors or bidders are not prohibited by the Ethics Code from making political contributions or otherwise supporting elected officials in municipalities where they do business. Political contributions and support are protected Constitutional speech, and specifically excluded from the prohibited gift provisions in the Ethics Code under Section 2-11.1(e) as well as Section 112.312(12)(b)(2), Florida Statutes *See INQ 18-36* (Attorney employed by law firm and contracted as City Attorney not precluded from making contributions to candidates for political office in the City where he serves)

Moreover, political support or even a campaign contribution in support of the Councilman's future candidacy would not create a voting conflict that would preclude his consideration and vote on the appointment of a BHI Town Attorney, where Mr. Geller is an applicant. *See INQ 16-238* (No prohibited voting conflict of interest where elected official will vote on a matter affecting a person or entity that made a political contribution to the official's candidacy for reelection)

Because the Councilman was previously represented by Mr. Geller and now may be politically endorsed by him in the future, it is important to point out 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. *See generally INQ 13-148; RQO 12-03* (Elected officials are encouraged to consider the appearance of impropriety even though there may not be a *per se* voting conflict that would prohibit their consideration or vote on a matter.)

Conclusion:

Applying the rationale underlying the Ethics Commission's conclusions in the opinions cited above, you would not have a voting conflict pursuant to Section 2-11.1 (d) of the Ethics Code that would prohibit your participation and vote on the appointment of a Town Attorney for Bay Harbor Islands, where Mr. Geller is seeking appointment.

This latter conclusion is premised on the fact that there has been no evidence presented that your vote on these matters might provide you with a measurable financial profit, or some professional enhancement.

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

cc: All Commission on Ethics 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.