



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

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

FROM: Martha D. Perez, General Counsel
Commission on Ethics & Public Trust

SUBJECT: INQ 2021-37, Voting Conflict, §2-11.1(d)

DATE: February 26, 2021

CC: COE Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflict of interest by The Children's Trust board members on Resolution 2021-K.

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-K, entitled, "Authorization to negotiate and execute contract renewals with three providers identified herein [Community Health of South Florida (CHSF), Florida Department of Health in Miami-Dade (FDOH) and Jessie Trice Community Health System (JT)], to deliver oral health preventive services, in a total amount not to exceed \$639,350.00 for a term of 14 months, commencing August 1, 2021, and ending in September 30, 2022, with one remaining 12-month renewal," will be considered at an upcoming meeting of TCT board.

This resolution seeks funding to renew contracts between The Children's Trust and three named agencies, CHSF, FDOH and JT, for community-based oral health preventative services for uninsured and underinsured preschool and elementary-aged children attending TCT childcare

centers, after-school summer programs, and Women, Infant and Children offices (collectively, TCT sites).¹

You inquire on behalf of two 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 2021-K. You make this inquiry in light of the relationship formed between the members' entities (including TCT) and the three named agencies CHSF, FDOH, JT:

- 1) Karen Weller is employed by the Florida Department of Health (FDOH). FDOH is the regulatory body for school health in Florida.² FDOH will receive direct funding from this Resolution in an amount not to exceed \$222,585.00.³
- 2) Constance Collins is the President of Lotus Endowment Fund, Inc., which is the supporting foundation for Sundari Foundation, Inc. (Sundari), where she serves as Executive Director. Sundari is a non-profit organization and recipient of the benefits provided by the vendors herein.⁴ Sundari has partnered with JT⁵ in a "health agreement" for the operation of The Lotus Health and Wellness Clinic, however, Sundari does not receive funding from this Resolution.

Discussion:

¹ Dental services took place last year at 87 Trust-affiliated childcare sites, 10 WIC offices and 41 Trust-funded after-school programs.

² The Florida Department of Health in Miami-Dade County (FDOH-Miami-Dade) is the local branch of the Florida Department of Health, charged with promoting and protecting the health and safety of all residents and visitors to Miami-Dade County.

In collaboration with the MDCPS and community school health providers, the School Health Program provides school health services that appraise, protect and promote the health of the students during their school years Pre-K through 12th grade; and provides ongoing school health services, regulatory oversight, quality assurance and technical assistance to the entire school community both public and non-public.

Newly formed partnerships between the Miami-Dade County Health Department (M-DCHD), MDCPS and TCT will aim to have a health team in every school. Providers in the community are encouraged to become a part of this unprecedented initiative. Establishing working relationships with a wide range of community partners create an environment that supports the health care needs of the child in the school community.

³ The proposed funding allocations consist of \$221,667.00 to CHSF, \$222,585.00 to FDOH-MD and \$195,098.00 to JT.

⁴ Sundari is a 501(c)(3) non-profit organization, dba, The Lotus House, which provides sanctuary, support, education, tools and resources to improve the quality of life of homeless women, youth and children. It is one arm of The Lotus Village- a mixed-use village with shelter facilities and supportive services such as a health clinic and a wellness center, serving homeless persons and families. www.lotushouse.org

⁵ JT is a federally qualified health care center with a clinic located at The Lotus Village, serving The Lotus House guests and nearby Overtown residents.

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 Children's Trust 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."

There are no facts indicating that either of these board members will be receiving a direct financial benefit from the board action, therefore, a conflict analysis under that provision of TCT Policy 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.⁶ *See* RQO15-04

As stated above, an automatic voting conflict arises when the board member has an enumerated relationship with an entity affected by the Resolution. In this instance, Ms. Weller is an employee of FDOH, which is a recipient of funds allocated under the Resolution. Consequently, FDOH is an entity affected by the allocation of funds under the Resolution, and Ms. Weller would be barred from participating and voting on this matter. *See* RQO 19-04⁷, INQs 20-50, 20-51, 20-53, 20-106

Regarding a possible conflict of interest under Section 2-11.1(d) of the County Ethics Code, while Ms. Collins is an officer of a nonprofit entity which has partnered with one of the providers and may stand to benefit from the agreement to provide oral health care services to eligible individuals and families, there is no unique impact which would create a voting conflict under this provision of the County Ethics Code. Furthermore, there are no facts suggesting that Ms. Collins might profit or be enhanced by the board action.

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.

Notably, Sundari, the nonprofit entity under the leadership of Ms. Collins, has partnered with provider JT, for the operation of The Lotus Health and Wellness Clinic, to provide preventive health care services (including dental care) on Lotus Village/Lotus House/Sundari property.⁸

Ms. Collins does not have a *per se* conflict prohibiting her participation and vote on this Resolution. However, an appearance of impropriety could be created in light of Sundari's partnership with JT. *See* INQ 19-16 (board member's past business relationship and *current affiliation* with proposer should be enough to avoid voting on RFQ); INQ 14-244 (board member who *shares office* with member of applicant non-profit may be perceived as an appearance of impropriety because of the sharing of office space); INQ 13-235 (elected official's *sublease* relationship to applicant to town attorney position does not create a voting conflict; however, if official believes there's any chance that voting on the matter would enhance the relationship, then he should refrain from voting)

Opinion:

Under the details provided concerning this Resolution of TCT authorizing the execution and renewals of agreements with the three named agencies to provide oral health care preventative services, it is recommended that Ms. Weller refrain from participating and voting on this Resolution based on an automatic voting conflict of interest.

With regard to Ms. Collins, the County Ethics Code represents a minimal standard of conduct. Consequently, while we do not suggest at any time that Ms. Collins would use her position on TCT board to secure award of the funding to JT because of its existing partnership with her non-profit entity, in consideration of the heightened "appearance of impropriety" ethical standard in TCT Policy, we recommend that Ms. Collins consider the totality of circumstances and avoid participation and/or vote on this item.

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.

⁸ The Lotus Endowment Fund (LE) non-profit entity operates exclusively to support Sundari, dba, The Lotus House. LE owns all facilities utilized by The Lotus House, providing them to Sundari for \$1 annually. The facilities include the shelter (operated by The Lotus House), the health clinic (operated by JT) and the wellness center (operated by the United Way). Notably, while Sundari does not receive funding from this Resolution, Lotus House guests are likely to benefit from the service to be provided by the vendor(s), including JT.

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.