



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

FROM: Gilma Diaz-Greco
Staff Attorney

SUBJECT: INQ 2021-38, 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 conflicts of interest by The Children's Trust board members on Resolution 2021-E.

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-E, entitled "Authorization to negotiate and execute a contract renewal with the Children's Forum for an amount not to exceed \$600,000.00 for the management of the Early Learning Career Center, and for The Children's Trust to expend up to \$1,000,000.00 for educator scholarships, in a total amount not to exceed \$1,600,000.00, for a term of 12 months, commencing October 1, 2021, and ending September 30, 2022, with one remaining 12-month renewal, subject to annual funding appropriations." will be considered at an upcoming meeting of TCT board.

This resolution seeks to renew a contract (the contract) between the TCT and the Children's Forum (TCF)¹ for the management of the Early Learning Center (the Center) first approved on July 9,

¹The Children's Forum (TCF) is a statewide, not-for-profit organization focused on early child development; and support to families and the early care education workforce. TCF manages the Early Education Career Center which provides professional development support including career advising, administering educational scholarships, and managing a professional development for early learning educators and administrators.

2018, when the TCT board approved the funding recommendation for the Center to provide early learning educators training and professional development opportunities through scholarships to local colleges and universities in order to improve teaching practices and interactions with children.²

You inquire on behalf of two TCT board members listed below regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or the TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2021-E. You make this inquiry in light of the relationship formed between Miami Dade College which employs the members, with TCT and TCF which manages the Center.

Miami Dade College offers credit and non-credit classes for early education and care practitioners at many locations throughout the County and the College receives funding from the educator scholarships funded by TCT and administered by TCF and the Center when MDC courses are taken by teachers.

- 1) Susan Neimand, PhD, is the Dean of the School of Education at Miami Dade College. TCT offers scholarships through the TCF/Center contract to Center students who attend the College's School of Education.
- 2) Monique Jiménez-Herrera, PhD is the Chair of Miami Dade College's Department of Social Services. The Center students funded by the TCT scholarships do not take any coursework at Miami Dade College's School of Social Services or Social Studies.

Discussion:

The COE 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, in relevant part, 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 provide 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".

The COE has not been advised of any facts indicating that any of the board members will be receiving a direct financial benefit from the board action, therefore, a conflict analysis under TCT rules is not applicable.

With respect to the County Ethics Code , Section 2-11.1(d) of the Code 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 RQO15-04.

As stated above, an automatic voting conflict arises when the board member has an enumerated relationship with the entity *affected* by the Resolution. In this instance, Ms. Neimand is employed as the Dean of Miami-Dade College's School of Education, which is a recipient of funds allocated under the Resolution. Consequently, Miami-Dade College's Education Department is an entity affected by the allocation of funds under the resolution, and Ms. Neimand would thus be barred from participating and voting on this matter. See RQO 19-04⁴, and INQs INQs 20-50, 20-51, 20-53, 20-106.

Regarding the application of Section 2-11.1(d) of the County Ethics Code to Ms. Jiménez-Herrera, she is employed by Miami-Dade College as a Chair of the Social Services department; however, the Center students funded by the TCT scholarships do not take any coursework at the College's School of Social Services or Social Studies which employs her. Consequently, Ms. Jiménez - Herrera would not have a voting conflict because her department is not a recipient of funding from TCT or the Center scholarships. Furthermore, we have not been advised of any other facts suggesting that Jiménez -Herrera will benefit or be enhanced or receive any special benefit from this vote.

Opinion:

Under the details provided concerning the Resolution authorizing TCT to negotiate and execute a contract renewal with TCF to fund the Center, Ms. Neimand has an enumerated relationship with the entities *affected* by the Resolution. Therefore, she would have a voting conflict under Section 2-11.1(d) of the Code of Ethics.

With respect to the Jiménez-Herrera, it does not appear that she has a voting conflict. While she has an enumerated relationship with Miami-Dade College, the college department which employs her is not a recipient of TCT funding and there are no other facts suggesting that she would benefit, be enhanced, or receive any special benefit from this vote.

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.

⁴ 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.

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.