



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

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

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-01, Voting Conflict, §2-11.1(d)

DATE: January 5, 2022

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 2022-A-Thrive by 5 Early Childhood Development: Child Care Quality Improvement.

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 2022-A, recommending, "[a]uthorization for a procurement waiver from the formal competitive procurement process to award a total amount not to exceed \$25,790,000.00 for the delivery of child care quality improvement services described below. The total amount breaks down to \$14,300,000.00 to negotiate and execute multiple contracts with providers, identified herein, and for The Children's Trust to encumber purchase orders in the amount of \$11,490,000.00 for educator scholarship payments, salary supplement payments to early learning educators, and high-quality tiered payment differentials to providers, for a term of 12 months, commencing October 1, 2022, and ending September 30, 2023," will be considered at an upcoming meeting of TCT board.

The Thrive by 5 quality improvement system (QIS), seeks to increase access to high-quality early learning for young children in high poverty neighborhoods. The QIS builds on prior TCT efforts, evaluation, and board policy guidance, as well as the state's early learning performance funding project. Using an equity lens, the QIS intervenes across systems to promote healthy development for children living in poverty by helping to build two-generational economic stability for families. The QIS offers a comprehensive array of supports for children and families, teachers, and child

care programs within an integrated system that takes a tailored and equitable approach to improve and maintain child care quality and ensure equitable access to high-quality programs. The system has been intentionally designed and each component plays a critical role in the overall integrated approach to child care quality improvement. This interwoven and comprehensive array of supports amounts to more than the sum of the individual parts and functions as an interconnected system.

Licensed child care programs that meet required criteria will qualify to participate in the Thrive by 5 QIS. The Thrive by 5 QIS has several funded partners including the Children's Forum, Inc., **Early Learning Coalition of Miami-Dade/Monroe**, **United Way of Miami-Dade**, and University of Miami Miller School of Medicine, which provide separate components to create an overall system of supports aimed at supporting early learning providers to achieve and maintain high-quality care for children at greatest need.

The Early Learning Coalition manages the child care scholarship enrollment and payments to address early learning capacity issues in our community. Miami's significant oversaturation of the child care market, coupled with low payment rates for children receiving school readiness subsidies, pose significant challenges for providers to meet and maintain high-quality standards. The Thrive by 5 QIS offers guaranteed payment for slots in high-quality programs to serve children not otherwise served by the school readiness program. The Children's Trust child care scholarships help children who become ineligible for a school readiness subsidy during the school year and eligible families that have incomes from 150 to 300 percent of the federal poverty guidelines.

The United Way of Miami-Dade (United Way) provides formative child assessment, which is supported by professional development and coaching for teachers and directors as they better individualize instruction for children based on the child's developmental level. Teachers conduct ongoing child assessments and analyze data to evaluate child knowledge, skills and behaviors. These assessments also provide a means by which to track the development of children and assess the impact of the education they receive. In order to achieve successful implementation, it is critical that all center staff, including directors, participate in trainings and professional development opportunities.

You inquire on behalf of 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 2022-A. You make this inquiry in light of the members' relationships with various entities that are funded partners or receive funding through this resolution in order to provide the services that form the QIS:

- 1) Malou C. Harrison, PhD is an Executive Vice President and Provost at Miami-Dade College's North Campus. She is a designee from the Miami-Dade College (MDC), appointed to the TCT Board by the MDC President. While Miami-Dade College could potentially receive funding from an educator scholarship if MDC courses are taken by teachers, MDC is not a funded partner for Resolution 2022-A nor would Ms. Harrison receive a benefit from the program.

- 2) Pamela Hollingsworth is Sr. Vice President for Strategic Partnerships and Program Development for the Early Learning Coalition of Miami-Dade/Monroe (ELC). The ELC will receive funding through Resolution 2022-A.
- 3) Mary Donworth is Senior Vice president of Community Impact for United Way of Miami-Dade. The United Way will receive funding through Resolution 2022-A.

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.¹
See RQO 15-04.

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

TCT board member Malou C. Harrison is an employee of MDC, which does not receive direct funding from this Resolution but may receive an indirect contribution through one of the educator

¹ 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.

scholarships, should a teacher choose to take a course with MDC. Additionally, MDC is not an entity affected by the vote.

Additionally, it does not appear that Ms. Harrison would have any oversight, supervision, or control over any aspect of QIS its funding provided MDC is not involved in the implementation of QIS services. It also does not appear that any special benefit or profit will come to her by virtue of her relationship with MDC nor will she be enhanced in any way by board action. Therefore, Ms. Harrison has no voting conflicts.

However, TCT board members Pamela Hollingsworth and Mary Donworth are employees, officers, or board members of ELC and the United Way, respectively, which both receive funding through this Resolution. Therefore, both TCT board members have an enumerated relationship with entities affected by the Resolution vote.

An automatic voting conflict exists where the board member is an officer of an entity that is affected, *directly or indirectly*, by the vote. *See* INQ 17-247; INQ 13-165; INQ 04-131 (*citing to relevant para. in* RQO 03-06).

We also cannot ignore the heightened appearance of impropriety standard imposed on all TCT board members pursuant to TCT Policy and Bylaws. This heightened appearance of impropriety ethical standard should be enough to avoid participation and/or vote on an item connected to the entity where the board member is employed or serves. *See* INQ 16-273 (finding that the vice-president of the bank where TCT has account may serve on the board but may have a voting conflict in the future regarding issues connected in any way to TCT's relationship with the bank because, even if there is no financial interest on the part of the board member, the existence of a heightened appearance of impropriety ethical standard should suffice); *See also* INQ 15-113 (concluding that a board member of TCT employed or member of an agency receiving funding from TCT must disclose the conflict publicly, file a written disclosure and abstain from speaking on the issue).

Hence, this office recommends that Ms. Hollingsworth and Ms. Donworth follow a conservative approach and recuse themselves in this instance, where the Resolution allocating funding directly or indirectly affects the entity of which each of them is an officer. *See* INQ 14-212.

Opinion:

Consequently, under the details provided concerning this Resolution of TCT, we recommend that board members Pamela Hollingsworth and Mary Donworth refrain from voting or participating in funding matters *directly or indirectly* affecting the ELC and United Way where, respectively, they have automatic conflicts of interests as officers within their entities; the entities' funding does not meet the "minor allocation" exception in RQO 19-04; and, recusal is in accordance with COE opinions as well as the heightened appearance of impropriety standard in TCT Policy and Bylaws.

However, it does not appear that board member Malou C. Harrison will profit or be enhanced by this vote nor will a special benefit come to her in her capacity as an officer of her non-profit entity. Also, based on the overall purpose and goal of QIS and the participation objectives of the entities

involved, Ms. Harrison's 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.