




MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Jose “Pepe” Diaz
Chairperson and District 12 Commissioner
Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: INQ 2022-103, Section 2-11.1(d), County Ethics Code, Voting Conflicts

DATE: June 14, 2022

CC: COE Legal Staff
Melanie Spencer, Assistant County Attorney
Isidoro Lopez, Esq., Chief of Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to the consideration and vote by the Board of County Commissioners on a matter affecting the Miami-Dade Expressway Authority.

Facts:

Pursuant to a state statutory grant of authority, the Miami-Dade Expressway Authority (MDX) was created by the Miami-Dade Board of County Commissioners (BCC) on or about 1994. Consequently, MDX is statutorily authorized, locally administered public agency.¹

¹ This opinion interprets Section 2-11.1 of the Miami-Dade Code (County Ethics Code) and does not comment on any pending litigation or disputes between the State of Florida, Miami-Dade County, MDX, or the more recently state-created Greater Miami Expressway Agency (GMX). These matters are beyond the grant of authority afforded the Miami-Dade County Commission on Ethics and Public Trust to interpret the County and municipal ethics codes in Miami-Dade County.

MDX collects tolls and has jurisdiction for five local expressways (SR 836, SR 112, SR 874, SR 878, and SR 924). It is tasked with reinvesting all of its funds within Miami Dade County and with operating and maintaining these expressways.

MDX has a nine-member Board of Directors. Five members are appointed by the BCC. Jose “Pepe” Diaz is the District 12 Commissioner and Chairperson of the BCC and also serves as an MDX Director and its Chairperson.

Commissioner Diaz is the sponsor of a Resolution scheduled for consideration and vote by the BCC that would approve a special permit and agreement authorizing the construction of a linear park for pedestrians and cyclists on MDX owned property. The park would constitute an extension of an abutting linear park on County owned land.

Issue:

Whether a member of the Board of County Commissioners who also serves a member of the Miami-Dade Expressway Authority Board of Directors may sponsor, consider, and vote upon a resolution of the BCC approving a special permit and agreement to authorize the construction of a linear park on MDX owned property.

Discussion

Section 2-11.1 (d) of the County Ethics Code provides that a voting conflict may be created where an elected official has an enumerated employment, legal, or financial relationship with an entity that would be or might be directly or indirectly affected by the action of the board. “Director” is one of the enumerated legal relationships referenced in subsection (d) of the Ethics Code.

More broadly, that subsection also provides that even if an enumerated relationship does not exist with entity that may be affected by the action of the board, a voting conflict may arise if the official “might, directly or indirectly, profit or be enhanced by the action of the board.”

However, the Ethics Commission has previously opined that when the official’s enumerated relationship is with a government or public entity that may be affected by the action of the board, then issue of a voting conflict on such matters is more narrowly described as whether any possible or potential *benefit to the Commissioner personally or professionally* may arise from the vote.²

² See generally INQ 20-37 (A County Commissioner that is also a School Board employee may vote on an item that authorizes County departments to exercise additional contract authority allowing for the continued purchase of food products from the School Board and will thus affect that entity. Even though “employee” is an enumerated relationship in Sec. 2-11.1(d) of the Ethics Code, because her employment is with a *government entity* that will be affected by the board’s vote, then the Ethics Commission will consider whether any possible or potential *benefit to the Commissioner personally or professionally* may arise from the vote); See also INQ 09-83 (A dual

Opinion

Applying the reasoning of the previous opinions issued by the Ethics Commission to the facts presented here, then because Commissioner Diaz serves as a Director for MDX, a government or public entity, the Ethics Commission will consider whether any possible or potential *benefit to the Commissioner personally or professionally* may arise from his vote on a Resolution of the Board of County Commissioners to approve a special permit and agreement authorizing the construction of a linear park for pedestrians and cyclists on MDX owned property.

Under the details provided to the Ethics Commission in this matter, it does not appear that Commissioner Diaz will benefit personally or professionally from the Resolution affecting MDX, and therefore he is not prohibited by Section 2-11.1(d) of the County Ethics Code, from considering or voting upon the matter.

We hope this opinion is of assistance and we remain available to discuss any matters addressed herein. Also, this opinion is limited to the facts as presented to the Ethics Commission and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions relating to the Code of Ethics for Public Officers and Employees, contained in Chapter 112, Florida Statutes, should be referred 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.

member of the Citizen's Transportation Advisory Committee (CTAC) and the Miami-Dade Expressway Authority (MDX) board of directors, may vote on a matter before the CTAC board that affects MDX because he will not be deriving a personal or financial benefit from the vote on the matter.