




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: Honorable Joe A. Martinez
District 11 Commissioner
Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2022-116, Section 2-11.1(d), County Ethics Code, Voting Conflicts

DATE: July 18, 2022

CC: COE Legal Staff
Christina M. Cicilia, District 11, 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 procurement matter relating to public safety communications systems.

Facts:

Commissioner Joe A. Martinez is the District 11 representative on the Board of County Commissioners. Neither Commissioner Martinez nor any member of his immediate family, individually or through a company, have an employment, financial, or legal relationship with Motorola Solutions, Inc. or any affiliated or subsidiary entity, L3Harris Technologies, Inc., or any affiliated or subsidiary entity, or Cooper-General Corp., or any affiliated or subsidiary entity.

On July 13, 2022, as an agenda item on the Chairman's Council on Policy, the Mayor recommended that the Board of County Commissioners (BCC) adopt a Resolution approving a no-bid contract with Motorola Solutions, Inc. (Motorola) for replacement of radios, maintenance and improvements to public safety communications systems, and a helicopter air-to-ground video streaming system, for the County Police and Fire Rescue Departments.

The item is due to be considered by the full Board of County Commissioners this week.

L3Harris Technologies, Inc. (L3Harris), which maintains the County's existing radio system, has opposed the no-bid contract recommendation benefitting Motorola and it has urged members of the BCC to open the process to competitive bidding.

Cooper-General Corporation (Cooper-General) is an authorized L3Harris contractor and provides system design, installation, and integration services to L3Harris system clients, including Miami-Dade County. Dr. Michael G. Fresco, Sr. (Dr. Fresco) is the President of Cooper-General. Dr. Fresco is also a member of the Miami-Dade County Community Action Agency Board, a County Advisory Board.

Dr. Fresco's son, Michael G. Fresco, Jr. (Mr. Fresco) is employed as Commission Aide to the District 11 staff office. Mr. Fresco's working title is Director of Public Relations and Social Media, and he is engaged on public relations, constituent services, and social media matters.

While Mr. Fresco may occasionally have some legislative duties, such as preparing meeting binders, he has not, and will not, be involved in any official capacity in the matters relating to the award of the above-described contract. He will specifically not be involved in any direct or indirect advocacy relating to Cooper-General or L3Harris.¹

Issue:

Whether Commissioner Joe A. Martinez has a voting conflict prohibiting his consideration and vote on the award of a no-bid contract to Motorola for replacement of radios, maintenance and improvements to public safety communications systems, and a helicopter air-to-ground video streaming system, for the County Police and Fire Rescue Departments.

Discussion:

Section 2-11.1(d) of the County Ethics Code, generally prohibits elected officials from voting on or participating in any matter presented, if the official has an enumerated employment, financial, or legal relationship with persons or entities which would be or might be directly or indirectly affected by any action of the board.

Based on the facts provided, Commissioner Martinez does not currently have any of the enumerated relationships in subsection (d) of the Ethics Code with any persons or entities which would be or might be directly or indirectly affected by the consideration or vote on the award of a no-bid contract to Motorola.

Even if the elected official does not have an enumerated relationship with a person or entity that may be affected, subsection (d) may still prohibit the official from considering or voting on an

¹ Dr. Michael G. Fresco, Sr., and Mr. Michael G. Fresco, Jr., have sought and been provided written ethics guidance in a separate opinion.

item if he or she *would or might, directly or indirectly, profit or be enhanced* by the action of the board.

This broad conflict voting prohibition is stricter than the state law standard codified in Section 112.3143 (1)(d), Florida Statutes, which provides that “No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss...” (INQ 14-86)

Given the enhanced conflict voting prohibition contained in the County Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance where, as noted above, an official might, directly or indirectly, profit or be enhanced by a vote. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. (*See* RQO 15-04)

Nothing in the facts provided suggest that there is a reasonable possibility or expectation that Commissioner Martinez might profit or be enhanced by his consideration or vote on the agenda item.

While Mr. Fresco is employed on the District 11 staff and his father Dr. Fresco is the President of a company that will be affected by the vote, the County’s Conflict of Interest and Code of Ethics Ordinance does not impose an “appearance of impropriety” standard. Moreover, Mr. Fresco has not and will not be involved in any manner with the consideration or vote on the recommended no-bid contract award to Motorola.

Opinion:

Neither Commissioner Martinez nor any member of his immediate family, individually or through a company, have an enumerated employment, financial, or legal relationship with persons or entities which would be or might be directly or indirectly affected by any action of the BCC on the no-bid contract award to Motorola, and there is no reasonable possibility or expectation that Commissioner Martinez might profit or be enhanced by his consideration or vote.

Consequently, under the details provided to the Ethics Commission in this matter, Commissioner Martinez is not prohibited by Section 2-11.1(d) of the County Ethics Code, from considering or voting on the agenda item.

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 presented to the Ethics Commission and is further 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.