



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Frank Jimenez
Country Club of Miami Community Council Board Member

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-131, Community Council Conflict of Interest, Section 2-11.1(d),
County Ethics Code

DATE: August 31, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding conflict of interest provisions affecting board members of the Country Club of Miami Community Council/Zoning Appeals Board.

Background:

You are a member of the Country Club of Miami Community Council/Zoning Appeals Board. You are also employed as the Director of Grants and Special Projects for Mater Academy, which consists of a group of 34 charter schools.

You are inquiring as to any potential conflict of interest provisions that may prevent your voting on a zoning application made by MG Property LTD Liability Co. The approval of said application would allow the applicant to expand an existing day care, to include a private school up to the 5th grade with an additional 9 students of which 129 would be day care students and 86 would be elementary grade students providing an expanded educational service for the surrounding community. Staff has made a recommendation to deny the application due to the proposed reduction of the required outdoor recreation space for students, which is required for the expansion of the facility. Your employer, Mater Academy, has two schools - Mater Gardens Academy, a kindergarten through 5th grade school, and Mater Lakes Academy, a 6th grade through 12th grade school, both within approximately 3 miles of the location of the application.

Miami-Dade County Community Zoning Appeals Boards (CZABs) are established pursuant to Section 33-306 of the Miami-Dade County (MDC) Code. The CZABs were created pursuant to

the Home Rule Charter at Section 4.08, in order to facilitate the zoning powers granted to the Board of County Commissioners (BCC) and to hear, consider and review appeals from zoning regulations or decisions of an administrative official.

CZABs and Community Councils (CC) are one in the same when acting in their capacities to hear zoning applications. *See* Sections 33-306 of the MDC Code and Section 20-41(A) of the MDC Code (Community Councils shall perform the duties and responsibilities of Community Zoning Appeals Boards as set forth in Section 33-306 of the Code of Miami-Dade County).¹ You are currently serving in Area 5 – Country Club of Miami Community Council.²

Discussion:

Section 20-45 of the Miami-Dade County Code, *Community Councils Conflict of Interest*, provides the following:

In addition to the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, each Community Council member is prohibited from voting on or participating in any way in any matter presented to the Community Council on which the member serves *if* the member has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Community Council on which the member serves:

- (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or
- (ii) stockholder, bondholder, debtor, or creditor,³

if in any instance the transaction or matter would affect the Community Council member in a manner distinct from the manner in which it would affect the public generally.

Any Community Council member who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Community Council on which the member serves shall absent himself

¹ *See also*, Section 33-307: The term of office of the members of each of the Community Zoning Appeals Boards shall be the terms established as members of Community Councils.

² *See* <https://www.miamidade.gov/zoning/community-council-05.asp>

³ Hereinafter collectively referred to as “prohibited relationships.”

or herself from the Community Council meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.⁴

Generally, the forementioned issues would trigger a conflict of interest analysis under Section 2-11.1(v) of the County Ethics Code, applicable to members of advisory and quasi-judicial boards.⁵ Notwithstanding, our analysis of voting conflicts for Community Council board members has primarily applied the conflict of interest provision under Section 20-45 of the MDC Code. Consequently, our guidance is based on Section 20-45 which mirrors the County Ethics Code voting conflict provisions found in Section 2-11.1(d) of the County Ethics Code.

As there are no facts which indicate that the voting member has a prohibited relationship with the entity affected by board action, MG Property LTD Liability Co., this section is not applicable.

Pursuant to Section 20-45, a conflict of interest would also depend on whether the proposed board action, i.e., the approval or denial of the zoning application, would present any likelihood that the CZAB board member would be affected in any way by the action in a manner distinct from the public generally *or* would profit or be enhanced, directly or indirectly, by the action. *See* INQ 11-116 (a council member may not vote if he would be affected by the vote differently than others in the community generally, e.g. would profit or be enhanced by the vote, or, if he has a particular relationship with the person or entity appearing before him) and INQ 19-27 (the voting conflict analysis should focus on whether the proposed commission action will present any likelihood that the official would, personally or professionally, be affected in any way by the item in a manner distinct from the public generally).

While the Ethics Commission has not adopted the standards used by the State Ethics Commission in determining whether a voting conflict exists, it has considered whether a loss or gain to the voting official would be too remote or speculative to create a voting conflict. *See* INQ 18-170 citing CEO 85-77 (A school board member who owns a retail clothing business near the site of a proposed school district administrative complex is not prohibited by Section 112.3143, Florida Statutes, from voting on matters relating to the use of the school district's property. Given the particular nature of the board member's business any gain or loss resulting from measures relating to the use of the school district's property would be too speculative and remote to constitute "special gain" requiring the board member to abstain from voting).

⁴ Ord. No. 97-196, § 1, 11-4-97

⁵ *Cf.* The conflict of interest provision in Section 20-45 mirrors Section 2-11.1(d) of the County Ethics Code, applicable to commissioners and Mayor, which prohibits a person from voting or participating in any way in any matter presented to the BCC if said person has any of the following relationships with any person or entity which would or might be directly or indirectly affected by any action of the BCC (or applicable board): (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person in a manner distinct from the manner in which it would affect the public generally. Any person who has any of the above relationships, who would or might, directly or indirectly, profit or be enhanced by the action of the BCC (applicable board) shall absent himself or herself from the meeting during the discussion of the subject item and shall not vote or participate in any way in said matter.

In this instance, you are employed by Mater Academy, which has two schools within three miles of the location of the applicant's proposed school. County Staff opined that application approval will not create significant traffic or environmental impacts on the surrounding area; however, the proposed reduction of the required outdoor recreation space is too excessive and would not provide adequate space for student recreation. In light of the applicant's plan and staff recommendations, several assumptions regarding student enrollment and the impact of another school option in the area would have to be made in order to find a conflict of interest. Such assumptions would make any potential conflict of interest for the voting member too remote and speculative.

Consequently, the voting member is not prohibited for voting on the zoning variance request made by the applicant.

While the County Ethics Commission does not have jurisdiction to interpret state statutes, the voting conflict provision contained in the Code of Ethics for Public Officers and Employee's ("state voting conflict provision") provides that officials are required to vote on measures coming before their board unless there exists a possible conflict of interest under the state ethics code or a local ethics code that imposes more stringent standards.⁶ The state voting requirement provision provides in relevant part as follows:

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. *If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.* (Section 286.012, Florida Statutes) (*Emphasis added*).

The state voting requirement provision allows local officials more discretion in abstaining from a vote if the measure under consideration arises from a quasi-judicial as opposed to a legislative matter. Consequently, when considering a zoning matter in a quasi-judicial setting, a local official may abstain from a vote even if voting on the measure would not inure to his or her special private gain or loss or otherwise not constitute a conflict under a local ethics code. *See* INQ 22-73.

If the voting member in this case believes that he would avoid an appearance of impropriety by declining to vote on the zoning variance request made by this applicant, and that abstention is

⁶ "Additional requirements by political subdivisions and agencies not prohibited. Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part." (Section 112.236, Florida Statutes)

appropriate to assure a fair proceeding free from potential bias or prejudice, then perhaps it is advisable that he should decline to vote or participate on the matter. *See id.*

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.