


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vanessa Fabricio
Board Member, Sub Area 52
Community Council Zoning Appeals Board, Area 5, County Club of Miami

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: INQ 2022-132, 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 voting conflict-of-interest provisions affecting board members of Community Council Zoning Appeals Board, Area 5, County Club of Miami (CZAB5).

Facts:

On August 31, 2022, CZAB5 will be considering an agenda item relating to an application by a property owner, MG Property LLC (MG). (Ref. No. MG Z2021000146 MG Property, LLC 21-146 52-40-11 N) MG is the owner of a property located at 18191 Northwest 68th Avenue. MG operates a day care at the property and is seeking to expand the day care to a private elementary school servicing students in early grades through grade five, and expanding the number of children served. County zoning rules require a significantly greater outdoor square footage than is actually available for the proposed use. Consequently, MG is seeking approval for the non-conforming proposes use.

Vanessa Fabricio, a CZAB5 Board Member, holds a long-term lease on a portion of a property located at 18400 Northwest 68th Avenue, some two blocks away from the MG property. Ms. Fabricio is in the process of retrofitting and upgrading the property for a proposed use as a private elementary school that will open in August 2023 and will initially serve students from pre-kindergarten through second grade, with a longer-term plan to expand up to fifth grade.

Discussion:

CZABs are established pursuant to Section 33-306 of the Miami-Dade County 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.

The Miami-Dade Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code) applies to quasi-judicial personnel, defined as members of Community Zoning Appeals Boards and other such boards and agencies of the County as perform quasi-judicial functions. (Section 2-11.1(b)(3), County Ethics Code)

Generally, voting conflict issues for County board members would require an analysis under Section 2-11.1(v) of the County Ethics Code, applicable to members of advisory and quasi-judicial boards.

However, Section 20-45 of the Miami-Dade Code, Community Councils Conflict of Interest, provides that:

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, 5 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 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.

Consequently, the Ethics Commission’s analysis of voting conflicts for CZAB members has applied the conflict-of-interest provision under Section 20-45 of the MDC Code. The CZAB conflict of interest provision contained Section 20-45 of the Miami-Dade Code, mirrors the County Ethics Code voting conflict provisions found in Section 2-11.1(d) of the County Ethics that applies to members of the Board of County Commissioners.

Section 2-11.1(d) of the County Ethics Code prohibits a board member from voting or participating in any way in any matter presented if he or she 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 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 or who would or might, directly or indirectly, profit or be enhanced by the action of the bboard 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.

The Ethics Commission has not adopted the standards used by the State Ethics Commission in determining whether a voting conflict exists, however, it has considered whether a loss or gain to the voting official would be too remote or speculative to create a voting conflict. ¹

Also, 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)

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. (INQ 22-73)

Opinion:

There are no facts which indicate that you have a prohibited relationship with the entity affected by board action, MG Property LTD Liability Co., and so the enumerated relationship portion of

¹ 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).

Section 2-11.1(d) of the County Ethics Code does not apply to your consideration or vote on the referenced agenda item.

A conflict of interest would thus depend on whether you would or might, directly or indirectly, profit or be enhanced by the proposed board action, the approval or denial of the zoning application.

Because you are the leaseholder on a site located only two blocks away from the zoning applicant's school, and your planned school at the location will arguably will be competing for clients/students with the zoning action applicant, then, while any benefit to you would be in the future, and somewhat speculative, the best course of action, in order to avoid even the appearance of impropriety, would be for you to decline to participate in the consideration or vote on the item.²

This opinion is based upon the as you presented them to the Commission on Ethics, is limited to an interpretation of the County Ethics Code 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.

² See *contra* INQ 2022-131 (*Non-owner* Director of Grants and Special Projects for Mater Academy, which consists of a group of 34 charter schools and has schools within 3 miles (*not two blocks*) of the school property that is subject of the zoning action, may vote on the item but may wish to consider appearance of impropriety.)