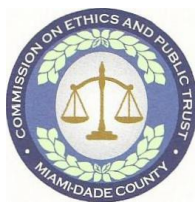


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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February 15, 2022

Via email only to expedite delivery:
anthony.defillipo@citynmb.com

Mayor Anthony F. DeFillipo
City of North Miami Beach
17011 Northeast 19th Avenue, 4th Floor
North Miami Beach, Florida 33162

Re: Ethics Inquiry Request, INQ 2022-15, Mayor Anthony DeFillipo, Conflicting Outside Employment, Section 2-11.1 (j) of the County Ethics Code

Dear Mayor DeFillipo:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and for seeking guidance regarding the application of the County and North Miami Beach ethics codes.

Facts:

You advise that you are regularly engaged in your private employment as a real estate broker. You refer to this employment as your livelihood.

The North Miami Beach Commission will be considering an amendment to the North Miami Beach Code of Ethics that seeks to proscribe a municipal elected official from being compensated as a real estate broker in the sale of property if the sale is contingent on the approval of the Commission or other municipal board for development purposes. Contingent is defined as presentation for review by the Commission or other board within a year of the sale of the property.

You have queried whether there is a provision in the County Ethics Code that specifically prohibits an elected official from being compensated in this manner. You also ask whether the County Ethics Code contains provisions that would prevent an elected official from acting in his official capacity as regards a property if he or she was a broker in a real estate transaction where the sale of the property was predicated on approval by the elected body or other city board. Finally, you have asked for some comment regarding the proposed amendment.

Issues:

Whether the County Ethics Code prohibits an elected official from being compensated as a real estate broker in the sale of property if the sale is contingent on the approval of the Commission or other municipal board for development purposes.

Whether the County Ethics Code prohibits an elected official from acting in his official capacity as regards a property if he or she was a broker in a real estate transaction where the sale of the property was predicated on approval by the elected body or other city board.

Discussion & Opinion:

To begin, your official actions as the Mayor and a voting member of the North Miami Beach Commission are governed by Section 2-11.1 of the Code of Miami-Dade County (“Ethics Code”). You are a covered person pursuant to Section 2-11.1 (b) (1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.

As an additional preliminary matter, there is no provision in the County Ethics Code, nor in any other municipal ethics code in Miami-Dade County that I am familiar with, that prohibits a covered person from being compensated as a broker in a real estate transaction if the property’s sale is contingent on subsequent municipal development approval.

The only prohibition on compensation that is worth noting is the limitation on the manner in which lobbyists may be compensated. The County lobbyist registration provisions contained in Section 2-11.1(s) of the Ethics Code do prohibit lobbyists from receiving a contingency fee or “success fee” for their work.

That being said, there are several provisions in the Ethics Code, apart from the proposed amendment to the North Miami Beach Code of Ethics, that limit official action by an elected official that has been engaged as a broker in a real estate transaction if the property is the subject of subsequent municipal action, irrespective of whether the sale is contingent on subsequent development approval.

The County Ethics Code does contain a prohibition on conflicting employment that applies to local municipal elected officials. Section 2-11.1(j) of the Ethics Code provides as follows:

Conflicting employment prohibited. No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) [including local municipal officials] shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties. [insert added]

The Ethics Commission has interpreted that provision to prohibit a person covered under the Ethics Code from engaging in employment that is going to create a frequently recurring conflict between private employment interests and the performance of public duties such that this would impede the full and faithful execution of his or her public duties.¹

¹ See generally INQ 02-59; INQ 12-221.

Accordingly, to the extent that your retainer as a broker in real estate transactions, whether or not the sale is contingent on subsequent municipal action, causes a recurring conflict of interest under the sections addressed below, *that impedes the full and faithful execution of your public duties*, then subsection (j) of the Ethics Code could proscribe your employment in that manner.

The second part of Section 2-11.1 (d) of the Ethics Code provides that an elected official shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Commission] if said person 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 Board of County Commissioners: (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 defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (Emphasis added)

Consequently, in several opinions, the Ethics Commission has advised voting members, that had a recent business relationship with a developer, to abstain from voting on the agenda item that would impact the developer. This is the ethics guidance offered, whether or not the sale is contingent on the approval of the Commission or other municipal board for development purposes.²

Section 2-11.1 (g) of the Ethics Code is a broadly worded prohibition on an elected official's exploitation of his or her official position to benefit themselves or any other person. That section provides as follows:

(g) Exploitation of official position prohibited. No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Thus, in your capacity as a broker in a real estate transaction, you must exercise caution and are prohibited from using your official position to influence, directly or indirectly, any matter that a recent client is involved in relating to the City whether it is contested litigation, a zoning matter, or a procurement an award.³

² See generally RQO 12-03; INQ 13-148; INQ 2021-68.

³ See generally INQ 2020-18.

Regarding your request for comment regarding the proposed legislation, the Ethics Commission has historically served as a resource to municipal elected officials and attorneys when cities are considering revisions to their ethics codes, if for no other reason, because the agency is charged with interpreting and enforcing these codes. I have myself appeared before your commission in discharge of this duty and will do so again, upon your request.⁴

Finally, while the Ethics Commission does not have the authority to interpret or enforce state statutes, we do note that Chapter 112, Florida Statutes, allows political subdivisions and agencies to establish more stringent standards of conduct for public officials than those specified under state law. Whether the proposed legislation amending the City's ethics code is a permissible more stringent standard of conduct or one that is in conflict with state law, is a matter on which I defer to your municipal counsel and the State of Florida Commission on Ethics.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,



Jose J. Arrojo
Executive Director

cc: Regine Monestime, Esq., Assistant City Attorney
All Commission on Ethics Attorneys

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.

⁴ Sections 2-1068 and 2-1074, Code of Miami-Dade County.