

## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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March 8, 2022

Via Facsimile & U.S. Mail:  
cobiella@glmlegal.com

Lorenzo Cobiella, Esq.  
Gastesi, Lopez & Mestre, PLLC  
8105 Northwest 155th Street  
Miami Lakes, Florida 33016

Re: INQ 2022-33, Section 2-11.1(d), County Ethics Code, Voting Conflict

Dear Mr. Cobiella:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a possible voting conflict with respect to an upcoming vote concerning the approval of a settlement agreement in litigation between the Town of Miami Lakes and the City of Hialeah.

### Facts:

You have advised that an agenda item is scheduled to be heard before the Town of Miami Lakes Council regarding a potential settlement agreement between the Town and the City of Hialeah. You inquire whether Councilman Carlos O. Alvarez may have a voting conflict of interest under Section 2-11.1(d) of the Miami-Dade Ethics Code, in voting or otherwise participating in the discussion of the item.

Councilman Alvarez is employed as the Principal for C.O.H.E.A. Career & Collegiate Academy (COHEA). COHEA is a 6<sup>th</sup> grade through 12<sup>th</sup> grade school located in Hialeah. COHEA is a city sponsored charter school pursuant to a charter granted by the Miami-Dade County School Board.

The COHEA governing board is the ultimate policy-making body for the school and has the responsibility for the affairs and management of the school. The governing board provides continuing oversight of school operations, including a responsibility to effectively and properly manage public funds.

As specified in the Code of the City of Hialeah, the Mayor, as President, is the chief executive officer of the corporation and has, subject to the control of the Board, comprised of the Hialeah Councilmembers, general supervision, direction and control of the business and officers of the corporation.

The Mayor and the Councilmembers of the City of Hialeah, sitting as the COHEA governing board approved Councilman Alvarez's employment agreement, which sets out the terms and conditions of his employment, and they have the ultimate authority to cancel his employment as the Principal for COHEA.

The Town may vote on a potential settlement agreement between the Town of Miami Lakes and the City of Hialeah, Miami Dade County, and possibly additional governmental bodies. The settlement agreement, if passed, would settle ongoing litigation over right of way jurisdiction on two Town roads.

The litigation does not name COHEA as a party and does not have a direct impact on the school.

Issue:

Whether Councilman Alvarez has a voting conflict that precludes him from voting on the settlement agreement between the Town of Miami Lakes and the City of Hialeah because the Hialeah Mayor and Councilmembers approve his employment contract and have the authority to cancel his employment.

Discussion:

Councilman Alvarez is employed as the Principal for COHEA, a municipal charter school governed pursuant to Code of the City of Hialeah by a governing board comprised of the Hialeah Mayor and Councilmembers. The governing board approves Councilman Alvarez's employment and has the authority to cancel his employment as the Principal for COHEA.

Section 2-11.1(a) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, clarifies that the Ethics Code sets minimum standards of ethical conduct and that its provisions are made applicable to officials and employees of county government and to all municipal governments within Miami-Dade County, including Miami Lakes.

Section 2-11.1 (d) of the Ethics Code, provides that an elected official may not vote or participate in any way in any matter presented to his board if the official is an employee of an entity which *would or might be directly or indirectly affected* by board action. This 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).

This provision has been interpreted by the Ethics Commission as establishing a three-test analysis to determine voting conflicts. The first test is whether an "automatic prohibited voting conflict" exists. An automatic prohibited voting conflict exists when the official has an enumerated

relationship, including employment, with a party who will be affected by the official's board action. Even in the absence of a financial or economic benefit to the elected official, if such a relationship exists, the official has a prohibited conflict of interest and is barred from voting. (RQO 15-04) <sup>1</sup>

In this case, there is blurring of the lines regarding employment status. Councilman Alvarez is not an employee of the City of Hialeah, who will certainly be affected by the Town Council's consideration of a settlement agreement in litigation with Hialeah, but rather an employee of a municipally chartered school that is governed by Hialeah's elected officials sitting as the school's governing board. While not an employee of the City of Hialeah, the officials elected to govern the City of Hialeah are responsible for approving and cancelling his employment as would a "regular" employer.

However, given the enhanced conflict voting prohibition enumerated in the Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in circumstances such as this one where 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)

Consequently, the third test under the Ethics Commission's interpretation of the voting conflict section of the Ethics Code is whether "broad prohibited voting conflict" exists. A broad prohibited voting conflict exists if the voting member would or might, directly or indirectly, profit or be enhanced by the action of voting body, irrespective of the voting member's official employment or financial relationship to the affected entity.

In applying the Ethics Code conflict voting prohibition, and applying this third test, the Ethics Commission has opined that an elected official should not vote or participate in a matter involving a Town Manager because the official's spouse was an immediate report to the Manager. The Manager was directly responsible for setting her daily work activities and schedule, evaluating her performance, deciding her eligibility for compensation increases, and considering her for promotion and discipline. Accordingly, we opined that an item directly impacting the Town manager could reasonably be expected to affect most if not all of the official's spouse's job duties and employment terms, which in turn would or might affect the Councilman's interests either directly or indirectly. (INQ 18-251)

Also, in INQ 13-148 and RQO 12-03, the Ethics Commission considered somewhat related scenarios involving local elected officials that had prior business relationships with entities that were going to be affected by votes of a city commission. While opining that the elected officials may not have *per se* voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code prohibiting their consideration and vote on matters that would affect the entities, the Ethics Commission cautioned the officials from voting and advised that:

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<sup>1</sup> When the voting member is a *lower-level employee* of a governmental entity, many, many layers removed from the entity's chief executive and governing board, then the Ethics Commission has opined that the automatic voting conflict provision is not implicated unless there is a direct or unique impact on the official. (See generally INQ 18-245)

The County's Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business

Opinion:

Given that Councilman Alvarez's employment agreement is approved by the Hialeah Mayor and Councilmembers sitting as the governing board for his employer and that they have the authority to cancel his employment, and that the City of Hialeah is clearly an entity that will be affected by the vote, then he might, *directly or indirectly, profit or be enhanced* by the action of the voting body, due to his employment and financial relationship with COHEA.

Also, because he currently has a financial relationship with a party that will be affected by the vote, then certainly to eliminate any appearance of impropriety, the Councilman should abstain from voting on the matter.

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.

If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Jose J. Arrojo, Esq.  
Executive Director

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