


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Reggie Leon
Miami Gardens Councilmember and Vice Mayor

FROM: Jose Arrojo, Executive Director
Commission on Ethics 

SUBJECT: INQ 2022-57, Conflicting employment, Sec. 2-11.1(j) Voting Conflict, Sec. 2-11.1(d); Gifts 2-11.1(e)(2)(g) and Exploitation of official position, Sec. 2-11.1(g)

DATE: March 30, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your proposed voluntary service as a director, with a not-for profit corporation.

Facts:

The Orange Blossom Football Classic (OBC) is an annual college football game between historically black colleges or universities (HBCU's). The game was played each year from the 1930's until the late 1970's and then again starting in 2021. Florida A&M University (FAMU) is always one of two contestants in the game.

The Orange Blossom Football Classic Association, Inc. (OBICA) is an active Florida not-for-profit corporation and a 501(c)(3) organization with an Internal Revenue Ruling year of 2019.

The football game is the core event of the greater OBC weekend which includes concerts, parades, networking, job fairs, and conferences. The OBC events are also used to solicit charitable donations for FAMU and HBCU's. OBC is actively promoted by elected officials, school leaders, and businesses as a local event that draws visitors to the community.

Last year, Miami Gardens Councilman and Vice Mayor Reggie Leon sponsored a resolution to include a \$50,000 budget allocation benefitting the OBICA in the Miami Gardens FY 21-22 budget.

The resolution was an agenda item before the Miami Gardens Council and was voted upon and approved by the Council.

This year, the OBC is sponsored by Denny's Restaurants and is scheduled for September 4, 2022, at Hard Rock Stadium in Miami Gardens, Florida.

The Councilman has been recently solicited to become an uncompensated OBCA director. As an OBCA director the Councilman would not have any active involvement in the running or operation of the entity. In his prospective role, he may engage in charitable gift solicitations on behalf of OBCA. Also, OBCA funding measures may come before the Miami Gardens Council for consideration and vote.

Issues:

Whether a municipal council member that is an unpaid director of a not-for-profit charitable organization may solicit gifts or grants as donations to the entity.

Whether a municipal council member that is an unpaid director of a not-for-profit charitable organization may consider and vote on measures impacting the entity.

Discussion:

Section 2-11.1(j) of the Ethics Code prohibits an elected official from accepting employment which would impair his or her independence of judgment in the performance of his or her public duties. However, that section does not operate as a bar on an official's employment or voluntary director service with a not-for-profit and the Commission on Ethics has previously opined that elected officials in Miami-Dade County may hold leadership or employment positions with not-for-profits.¹

The County Ethics Code at Section 2-11.1(e)(3) generally prohibits the solicitation or demand of a gifts by elected officials. However, an applicable exception to the general gift solicitation ban is contained in Sections 2-11.1(2)(g) that allows the solicitation of gifts by elected officials on behalf of nonprofit organizations for use solely by the entity as long as the official does not receive any compensation as a result.

Accordingly, the Ethics Commission has recognized that private donations and funds can be properly relied upon to promote charitable causes and events which clearly serve a public purpose.

The Ethics Commission recommends that officials should adopt safeguards to avoid appearances of impropriety and to ensure that solicitation, acceptance, and use of private funds are governed

¹ INQ 17-235; INQ 18-126; INQ 19-44; INQ 2021-10

with the highest standard of ethics, transparency, disclosure and accountability in these solicitation and funding processes.²

Section 2-11.1(g) of the Ethics Code prohibits the exploitation of a public position to secure a special benefit for a third party. Because businesses or persons that are solicited may feel compelled to donate because of the official's position, the soliciting official should be careful to avoid any appearance that he or she is using or attempting to use his or her official position to secure special benefits for others. Elected officials that are engaged in grant or charitable solicitations in their leadership position with a not-for-profit, should be cautious not to abuse or exploit their official positions in soliciting donations.³

Prior Ethics Commission opinions regarding solicitation of charitable contributions are instructive on this point. Solicitations of donations from private businesses should be broad based. The Ethics Commission has cautioned against direct solicitation of current or future government vendors and contractors, while recognizing that these parties can be part of a larger solicitation that includes members of the general community.⁴

Of course, a voting member of a municipal council who is also a "director" of a not-for-profit, is restricted by Section 2-11.1(d) of the Ethics Code from participating or voting on any matter that might directly or indirectly affect the not-for-profit.

Section 2-11.1(d), the voting conflict section of the County Ethics Code, imposes a *per se* or automatic prohibition on an elected official's vote or participation on a matter if he or she holds a primary enumerated position with an entity that may be directly or indirectly affected by the action of the elected body. "Director" is an enumerated position.⁵

There is a relevant limited exception to the bright line rule that prohibits voting or participation in an item that may directly or indirectly affect the not-for-profit for which the official serves as a director.

An elected official that serves in a primary enumerated position with an entity, may vote on an overall budget item when the budget provides funding to entity, if the funding allocation is very minor compared to the overall budget.

² See generally RQO 02-70; INQ 13-70; INQ 19-124

³ INQ 19-44

⁴ RQO 06-05

⁵ INQ 15-04

As regards this exception, if it is feasible and allowable to separate the line-item allocation that funds the affected entity so that the elected official can vote on the overall budget item minus that line item, then this would be the preferred and recommended course of action.

While this exception applies to votes on overall budget votes, the *per se* or automatic voting prohibition nevertheless prohibits an elected official from participating in items or discussion regarding funding of the affected entity in other meetings of the elected body, including participation in budget workshops during which the body is specifically addressing funding for the entity.⁶

Finally, if the service by the elected official is as an *ex officio* non-voting director, for example, one that is appointed as a result of an entity's bylaws that require an elected official's service, then the official is not a covered party under the Ethics Code and may vote on and participate in discussion of matters involving the nonprofit, even though he or she may serve as a director for the entity that might be directly or indirectly affected by an action of elected body.⁷

Conclusion:

The County Ethics Code does not prohibit your service as an unpaid voluntary director for the Orange Blossom Classic Association, Inc. (OBICA). It is not likely that accepting this position would impair your judgement as a voting member of the Miami Gardens Council.

You may solicit charitable contributions for OBICA as long as you are cautious. Because businesses or persons that are solicited may feel compelled to donate because of your official position, then you should be careful to avoid any appearance that you are abusing or exploiting your official position as a municipal council member to secure donations for OBICA.

⁶ RQO 19-04

⁷ See The Ethics Commission has opined that persons serving in an "*ex officio* capacity" are not covered parties under the Ethics Code. See RQO 05-66 (Trustee of the Miami-Dade Homeless Trust that served in an *ex officio* capacity because of his or her employment relationship with an enumerated entity was not limited by the Ethics Code's prohibited appearances section from presenting or seeking funding from the Trust, as long as it was done on behalf of the enumerated entity); See RQO 10-25 (Trustee of the Public Health Trust that served in a non-voting *ex officio* capacity because of his or her employment relationship with an enumerated entity did not have to comply with the financial reporting requirements of the Ethics Code that are otherwise applicable to County trust and board members.)

You may vote on future OBCA funding measures that may come before the Miami Gardens Council only if you are not the sponsoring member and if the funding is a small portion of an overall municipal budget but if there is a way to separate the line-item allocation so as to avoid voting, then this would be the preferred method.

Finally, if your voluntary director's position is as an *ex officio* non-voting member of the OBCA board, then you may be able to vote on measures that impact the entity, but it is recommended that you seek ethics guidance before engaging.

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.

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.