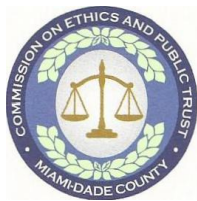


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 18, 2022

Via email only to expedite delivery:
cityattorney@cityofsweetwater.fl.gov

Ralph Ventura, Esq.
City Attorney
City of Sweetwater
500 Southwest 109th Avenue
Sweetwater, Florida 33174

Re: Ethics Inquiry Request, INQ 2022-69, Voting Conflict, Section 2-11.1(d) of the County Ethics Code

Dear Mr. Ventura:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and seeking guidance regarding the application of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") to a Sweetwater Commissioner's possible vote on a legislation relating to electric charging station requirements for new construction.

Facts:

A member of the Sweetwater Commission is employed by a publicly traded company that is engaged in the business of electric vehicle charging stations. The voting member is not a company manager or executive but is rather employed in a technical position "writing proposals and documents" for the company. The member is paid a salary and as part of his or her compensation received stock in the company. The sale of the stock is restricted contingent on continued employment and tenure with the company. The member is not engaged in commissioned sales.

The Sweetwater Commission may consider an ordinance that would require all new construction of a larger size and density to have vehicle charging stations.

The City of Sweetwater is just under three-square miles in size and has a population of approximately 20,000 residents.

Issue:

Whether a Sweetwater Commissioner employed by a business that installs electric charging stations may participate and vote on a proposed ordinance that would require charging stations in all new construction of a larger size and density.

Discussion:

As regards future consideration and votes on matters as a Commissioner, the member's actions are governed by the County Ethics Code inasmuch Section 2-11.1(b)(1) of the County Ethics Code applies to members of County and municipal elected legislative bodies.

The county voting conflict provision is contained in Section 2-11.1(d) of Miami-Dade County Code. The provision is stricter than that which is contained State Ethics Code. The county provision provides that a voting conflict exists if the voting member "would or might, directly or indirectly, profit or be enhanced by the action..." as opposed to the state standard contained in Section 112.3134 (3) (a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure "which would inure to his or her special private gain or loss." ¹

The specific text of the county voting conflict provision contains three clauses that describe scenarios which may give rise to a voting conflict.

That section provides, in relevant part, that a local elected official may not:

[Vote] on or participate in any way in any matter presented...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...(i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or

[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] (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.

...or who would or might, directly or indirectly, profit or be enhanced by the action of the Board...

Consequently, officials may be prohibited from voting on a measure if they have a first tier enumerated relationship with a party who might be directly or indirectly affected by any action of

¹ RQO 15-04 (As allowed by state law, the Board of County Commissioners has established a more stringent standard of conduct as regards the local voting conflict provision than exists under state law. The county voting conflict law specifically provides that a voting conflict may exist when 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 and effect.)

the board.² If such a relationship exists, an “automatic conflict of interest” arises, and the official is barred from voting.

In determining whether an automatic voting conflict of interest exists when an employment relationship exists, the Ethics Commission will consider whether the voting member’s employer is an “entity which would be or might be directly or indirectly affected” by an action of the board. In making this determination, the Ethics Commission has opined that there is some room for discretion in the analysis. It is relevant if the effect upon the employer is substantial or rather if it is merely a possible speculative effect. (RQO 15-04)

Officials may also be prohibited from voting if the official would or might, directly or indirectly, profit or be enhanced by the action of board. If such, then a “broad voting conflict” exists pursuant to the third clause in the local voting conflict provision and the official is barred from voting.

In determining whether a broad prohibited voting conflict exists, the Ethics Commission will consider whether the voting member might, directly or indirectly, profit or be enhanced by the vote. In making this determination, it is relevant whether the voting member is employed in a managerial or executive role with an affected entity. A vote by a member employed in a managerial role, when the vote is consistent with a position advocated by his employer, may result in profit or enhancement in the form of maintenance or improved employment prospects. (RQO 15-04)

Beyond voting, a councilmember may not participate in any official action directly or indirectly affecting their private employer. The member may not use municipal resources or staff in furtherance of the employer or its business activities or otherwise use his official position to secure special accommodations for himself, herself, or the employer. *See* Sections 2-11.1(g) and (n), Ethics Code.

The member is also prohibited from representing the employer before any municipal board or agency regarding any benefit or relief sought by the company. *See* Section 2-11.1(m)(1), Ethics Code.

Conclusion:

If the proposed ordinance passed, then city officials would have to determine if new construction was of the size and density that would require charging stations. The voting member’s employer would then have to seek the job from the builder, and then the builder would have to select the employer to install the station, as opposed to other companies providing this service.

The passage of the ordinance would thus not affect the employer in an immediate or substantial manner and would rather have a more speculative effect.

Consequently, there is no “automatic conflict of interest” that would prohibit the member’s consideration and vote on a proposed ordinance that would require charging stations in all new construction of a large size and density.

² The first tier enumerated relationships are officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary.

If the proposed ordinance passed, the member, who is not employed in a managerial or executive role with the electric charging station company, and who is not compensated by commission, or otherwise involved in sales, would not profit, or be enhanced.

Consequently, there is no broad voting conflict that would prohibit the member's participation or vote on the proposed ordinance.

To be clear, the voting conflict analysis in this matter is a bit of a close call. While the application of the voting conflict provision in the State Ethics Code might readily lead to a conclusion that no voting conflict exists, this is not the case under the County Ethics Code's more restrictive provisions.

If the member's employer was the only company providing electric charging station services in the jurisdiction, or if there was some clearer nexus between the employer securing business in Sweetwater and the member's employment benefits or status, then this opinion might well reach a different conclusion.

Also, the member should be cautious as regards his or her involvement in any transaction between Sweetwater officials and his employer. If the member must interact with Sweetwater on ministerial transactions as part of his or her employment, then he or she should use whatever processes are available to the general public and not seek any special accommodation for the employer.

Of course, the member should refrain from giving Sweetwater employees any direct or indirect instruction to engage on any matters in which he or she or the employer are involved in.

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

Sincerely,



Jose J. Arrojo
Executive Director

cc: 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.