



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Juana Leon, Administrative Services Manager
The Children's Trust

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-92, Voting Conflict, §2-11.1(d)

DATE: May 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 possible voting conflicts of interest by The Children's Trust board members on Resolution 2022-A FNSP Recommend.

Background:

The Children's Trust Board (TCT) is an independent special district established by Miami-Dade County in Art. CIII, Sections 2-1521 through 2-1531 of the Miami-Dade County Code (TCT ordinance).

You have advised that Resolution 2022-A, recommending, "[a]uthorization to negotiate and execute contracts with 22 providers, identified herein, and selected following a competitive solicitation for Family and Neighborhood Support Partnerships, in an amount not to exceed \$13,300,000.00 and for The Children's Trust to encumber a purchase order in the amount of \$500,000.00 for pooled family stabilization funding, for a total amount not to exceed \$13,800,000.00, for a term of 12 months, commencing October 1, 2022, and ending September 30, 2023, with four remaining contract renewals," will be considered at an upcoming meeting of TCT board.

Family and Neighborhood Support Partnerships (FNSP) offers comprehensive and individualized support for children, youth, and their families experiencing challenges that may limit them from realizing their full health, social, educational, and economic potential. FNSP aims to amplify strengths and build resilience to counter the effects of adverse childhood experiences (ACEs) such as child abuse or neglect, exposure to family and community trauma and violence, family mental health issues, legal issues, and extreme poverty.

Populations to be served by Partnerships include residents of neighborhoods affected by poverty, crime, unemployment, community violence, and countywide populations with specific needs and challenging life experiences. Partnerships also includes an array of participant-centered services that engage parents and youth as partners in order to build on their strengths, address life challenges, and provide individualized supports.

All funded partnerships will have access to a pooled funding amount, administered through The Children's Trust's care coordination reporting system. These funds are used to address family and youth emergencies, such as food insecurity, threat of eviction, and termination of utilities. Additionally, one contract focused on serving children, youth, and families living with significant disabilities includes dedicated funding for youth program inclusion and in-home respite care supports for children with significant disabilities and accommodation needs. Due to the comprehensive nature of the expected services, The Children's Trust funding alone will not be sufficient to implement the expected services with fidelity. Thus, *funded partnerships* must contribute at least 10 percent in match funding, which is defined as cash or in-kind contributions including nonfederal cash dollars, donated items, and/or services that are part of the overall cost of operating the program.

You inquire on behalf of the below-listed TCT board members, regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2022-A FNSP Recommend:

1. Trynegwa Diggs is employed by Miami-Dade County Public Schools (M-DCPS), Division of Academic Support as the Administrative Director. MDCPS does not receive funding through this Resolution. Children that attend MDCPS may be referred to or receive benefits from FNSP programs, but MDCPS is an in-kind partner not receiving TCT funds.
2. Tiombe Bisa Kendrick-Dunn is employed by M-DCPS as a school psychologist and is the Chairperson for Professional Growth & Development at M-DCPS. MDCPS does not receive funding through this Resolution. Children that attend MDCPS may be referred to or receive benefits from FNSP programs, but MDCPS is an in-kind partner not receiving TCT funds.
3. Richard Dunn works for M-DCPS. MDCPS does not receive funding through this Resolution. Children that attend MDCPS may be referred to or receive benefits from FNSP programs, but MDCPS is an in-kind partner not receiving TCT funds.
4. Dorothy Bendross-Mindingall is a MDCPS board member. MDCPS does not receive funding through this Resolution. Children that attend MDCPS may be referred to or receive benefits from FNSP programs, but MDCPS is an in-kind partner not receiving TCT funds.
5. Danielle Cohen Higgins is a Miami-Dade County Commissioner for District 8, appointed by the Chair of the Miami-Dade County Commissioners. Miami-Dade County (MDC) does not receive funding through this Resolution. Children that live within MDC may be

referred to or receive benefits from FNSP programs, but MDC is an in-kind partner not receiving TCT funds.

6. Nelson Hincapie is the Miami-Dade County Mayor's appointee to The Children's Trust Board. Mr. Hincapie also serves as the Executive Director of Miami Dade College Foundation. Miami Dade College serves as both an in-kind partner and a FNSP program paid partner receiving TCT funding.¹
7. Dr. Malou C. Harrison, PhD is an Executive Vice President and Provost at Miami-Dade College's North Campus. She is a designee from the Miami-Dade College, appointed to the TCT Board by the Miami Dade College President. Miami Dade College serves as both an in-kind partner and a FNSP program paid partner receiving TCT funding.²
8. Maria Norton is the appointee for the Miami-Dade County PTA/PTSA. PTA/PTSA is an independent entity that supports advocacy for MDCPS. PTA/PTSA nor MDCPS receive funding through this Resolution.
9. Ta'Myah Byars is the representative for the Student Government Association (SGA). MDCPS does not receive funding through this Resolution. Children that attend MDCPS may be referred to or receive benefits from FNSP programs, but MDCPS is an in-kind partner not receiving TCT funds.
10. Annie Neasman is President and CEO of the Jessie Trice Community Health System, Inc. Jessie Trice Community Health System, Inc. is an in-kind partner that does not receive funding through this Resolution.
11. Gilda Ferrada is representative for the Florida Department of Children & Families. Florida Department of Children & Families is an in-kind partner that does not receive funding through this Resolution.
12. Dr. Daniel Bagner is employed by Florida International University as the Director of the Early Childhood Behavior Lab and Professor of Psychology. Florida International University (FIU) is an in-kind partner not receiving TCT funds for the FNSP program; however, FIU, College of Law, Immigrant Children's Justice Clinic is a FNSP program paid partner receiving TCT funding. Dr. Bagner is not employed by FIU, College of Law and the department which employs him will receive no funding.
13. Constance Collins is President and Executive Director of the Sundari Foundation, a public charity, best known for the Lotus House Women's Shelter, and its supporting foundations, Lotus Endowment Fund, Lotus Village Development and Lotus Supporting Foundation.

¹ The FNSP organization Educate Tomorrow named Miami Dade College as one of its paid partners receiving funding. The funding allocation is listed in an amount not to exceed \$950,000.00. Upon further inquiry, a memorandum of understanding has been executed between Educate Tomorrow and Miami Dade College Foundation on behalf of Miami Dade College North campus, which provides the FNSP program services.

² See footnote 1.

The Sundari Foundation is a FNSP organization receiving TCT funding in an amount not to exceed \$450,000.00.

14. Karen Weller is a designee of Miami-Dade County Public Health Department. Miami-Dade County Public Health Department is an in-kind partner that does not receive funding through this Resolution; however, children or families that seek services from the Miami-Dade County Public Health Department may be referred to or receive benefits from FNSP programs.

Discussion:

This office may consider and opine on whether a TCT board member has a conflict of interest affecting his or her vote or participation in a funding allocation from TCT. *See* RQO 19-06.

TCT's Conflict of Interest and Code of Ethics Policy states, inter alia, that a board member shall not vote on any matter presented to the TCT Board if the member will receive a direct financial benefit from the board action. TCT's Bylaws also provides that, "Board members will act in such a manner to avoid the appearance of impropriety. No member shall serve as a staff member of any agency when The Children's Trust provides more than fifty (50) percent of the agency's budget, and The Children's Trust's funds may pay no portion of a Board member's salary."

There are no facts indicating that any of the board members will be receiving a direct financial benefit from board action, therefore, a conflict analysis under TCT rules is not applicable.

TCT is also bound by the Ethics Code. *See* RQO 19-06. The Ethics Code at Section 2-11.1(d), establishes a voting conflict if:

- 1) The board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote;
- 2) The board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it would affect the public generally; and,
- 3) The board member might, directly or indirectly, profit or be enhanced by the board action.³
See RQO 15-04.

An automatic voting conflict arises when the board member has a prohibited relationship with the entity *affected* by the Resolution.

³ This section of the County Ethics Code applies to the Mayor and members of the Board of County Commissioners (BCC); however, by implication, members of The Children's Trust board may be included for purpose of analysis because, as an independent special district, the role and authority of TCT members mimics the role of the BCC, as ultimate decision-makers of contracts allocating funds such as the ones described herein.

In this instance, TCT board members Trynegwa Diggs, Tiombe Bisa Kendrick-Dunn, Richard Dunn, and Dorothy Bendross-Mindingall are employees, officers, or board members of MDCPS, which is an in-kind partner of FNSP not receiving funding from this Resolution. Therefore, even though Trynegwa Diggs, Tiombe Bisa Kendrick-Dunn, Richard Dunn, and Dorothy Bendross-Mindingall are employees or officers of MDCPS, they are “not automatically disqualified from participating in an item that would affect the governmental entity [because they would not] personally profit or be enhanced personally in any way in the event that [the] Resolution is passed and the program it promotes becomes a reality.” See INQ 20-47, quoting “Government Agency Employment Relationship Exception” in Memorandum to RQO 19-04, and INQ 18-68.

Additionally, it does not appear that the above-mentioned board members have any oversight, supervision, or control over FNSP programs since FNSP and its partner organizations, not MDCPS, will fund, implement, and operate the programs. It also does not appear that any special benefit will come to them by virtue of their relationship with MDCPS. Therefore, they have no voting conflicts.

As to TCT board member Maria Norton and Ta’Myah Byars, which are both officers of entities affiliated with MDCPS, PTA/PTSA and SGA, respectively. While M-DCPS is an in-kind partner its does not receive any funding through this Resolution. Further, neither SGA nor PTA/PTSA will receive any funding through this Resolution. Therefore, the board members do not have a prohibited enumerated relationship any entity affected by this Resolution and no voting conflict arises under this principle. It also does not appear that any special benefit will come to them by virtue of their relationship with MDCPS or their entities.

As to Commissioner Cohen Higgins, while Commissioner Cohen Higgins does have an enumerated relationship with Miami-Dade County, she does not have such a relationship with the FNSP or its partner organizations which are receiving TCT funding.

There are no facts indicating that Commissioner Cohen Higgins may profit or be enhanced by the board action authorizing the contract renewal. See INQ 20-46; INQ 20-47; INQ 20-48; and INQ 21-57. TCT is not providing funding the Board of County Commissioners instead the funding is allocated to FNSP and its partner organizations to children and families throughout the County. Therefore, there is no unique impact which would create a voting conflict.

Board members Annie Neasman, an officer of Jessie Trice Community Health Systems, Inc., Gilda Ferradaz, a representative of the Florida Department of Children & Families, and Karen Weller, a designee of the Miami-Dade County Public Health Department are all employed by entities which are in-kind partners of the FNSP program which do not receive funding from this Resolution. Additionally, neither member is employed by an entity *affected* by this Resolution or a recipient of the funding. See INQ 2021-38 and INQ 2021-74.

It also does not appear that any board member will receive a special benefit by virtue of their relationship with their respective entities. Therefore, there is no unique impact which would create a voting conflict as the board members would not be affected by this vote in a matter distinct from the public generally. See INQ 21-86 and INQ 22-77.

Board member Dr. Daniel Bagner is FIU's Director of the Early Childhood Behavior Lab and Professor of Psychology. While he is also an employee of an entity which is an in-kind partner of FNSP not receiving funding from this Resolution, FIU, College of Law, Immigrant Children's Justice Clinic is a FNSP program paid partner receiving TCT funding. Dr. Bagner is not employed by FIU, College of Law, and the Psychology Department which employs him will receive no funding. Therefore, Dr. Bagner has no enumerated relationship with an entity *affected* by the Resolution and has no voting conflict. Further, there are no facts indicating that Dr. Bagner may profit or be enhanced by the board action authorizing contract renewal. See INQ 20-108, INQ 21-56, and INQ 21-59.

By contrast, TCT board members Nelson Hincapie and Dr. Malou C. Harrison are officers of Miami Dade College which is a paid partner under the FSNP organization Educate Tomorrow. Thus, **Miami Dade College is receiving funding from this Resolution.** In fact, board member Hincapie serves as Executive Director for the Miami Dade College Foundation, which is the signatory for the memorandum of understanding between Educate Tomorrow and Miami Dade College North Campus to operate and provide the FNSP programming. Further, board member Harrison is the Executive Vice-President and Provost for Miami Dade College, North Campus where the services for the FNSP program are being provided. Therefore, as both board members have an enumerated relationship with an entity *affected* by the Resolution, both board members are barred from participating and voting on this matter. See RQO 19-04⁴ and INQ 20-50, INQ 20-51, INQ 20-53, INQ 20-106, and INQ 21-38.

Lastly, TCT board member Constance Collins, is an officer of the Sundari Foundation, a FNSP organization **receiving direct funding from this Resolution.** Therefore, Ms. Collins also has an enumerated relationship with an entity *affected* by the Resolution, and she would have a voting conflict under Section 2-11.1(d) of the Code of Ethics. See INQ 21-38, INQ 20-50, INQ 20-51, INQ 20-53, and INQ 20-106.

Opinion:

Based on the information provided herein, it does appear that TCT board members Nelson Hincapie, Dr. Malou C. Harrison, and Constance Collins have a voting conflict, as each member has an enumerated relationship with a recipient entity for funds under this Resolution.

However, the remaining TCT board members have no voting conflicts, as they have no enumerated relationship with the entities receiving funds through this Resolution, they will not profit (directly or indirectly) or be enhanced by this vote, nor will they receive a special benefit in their professional capacities. Further, their voting and participation with regard to this Resolution would not raise the perception of an appearance of impropriety.

⁴ Memorandum re RQO 19-04 sets forth a "minor allocation" exception to the voting conflict in Section 2-11.1(d) of the Ethics Code: "a [TCT member] that serves in a primary enumerated position with an entity, may vote on an overall budget item when the budget provides funding to [the]entity, if the funding allocation is very minor compared to the overall budget... However, this Resolution is not part of an overall budget item as contemplated by this exception.

This opinion is limited to the facts as you presented them to the COE 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.