

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Friday, March 08, 2013 4:26 PM
To: 'Monestime, Regine'
Cc: Frigo, Victoria (COE)
Subject: INQ - Regine Monestime (North Miami)

Ms. Monestime:

You have asked a series of questions regarding whether your mayor or councilmembers may vote for spouses, domestic partners, family members to serve on a Section 501(c)(3) foundation established by and controlled by the city or to other city boards, as well as whether such individuals may serve on city boards appointed by the mayor and council.

In general, you should reference Section 112.3135(2)(a), Florida Statutes, pursuant to which "A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member." [see statute for exceptions] Section 112.3135(1)(d) defines a "Relative" as "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother stepson, stepdaughter, stepbrother, stepsister, half-brother, or half- sister."

I believe that the aforementioned statute, which is enforceable through the State of Florida Commission on Ethics, should suffice to answer most of your questions. While the Miami-Dade Commission on Ethics has no power to interpret or enforce the above statute, it would appear clear that most of the individuals you reference in your questions fall within the ambit of the statute. A boyfriend or girlfriend does not. However, depending on the circumstances, the appearance of impropriety regarding voting on an appointment of a boyfriend or girlfriend by a voting member of the council, should give rise to consideration of whether it is appropriate for the member to abstain in such circumstances.

You should be aware also that, when a board member has a prohibited conflict, it is necessary under state law (Section 112.3143(3)) for that board member to both announce publicly at the meeting the reason for the abstention, as well as to file a written notice on Florida Commission on Ethics Form 8B with the clerk within 15 days after the vote.

Additionally, be advised that Section 2-11.1(d) would prohibit a voting member of your council from voting on a matter when that official "would or might, directly or indirectly, profit or be enhanced" by the action of the board. In some circumstances, this provision, enforceable by the Miami-Dade Commission on Ethics could overlap with the above state statute.

In the event that a member has violated Section 112.3135 in voting for a family member, there are consequences pursuant to Chapter 112 that would apply for such a violation should a complaint be filed with the State of Florida Commission on Ethics. Regarding a possible remedy for the city in case of such a violation, that issue is beyond the purview of the Miami-Dade Commission on Ethics and Public Trust.

I am unaware of any prohibition under County ordinance that would disallow the appointment of someone whose business has received grant money from the City or CRA to be appointed to the Foundation Board or any City board. It may be prudent, however, to check the terms of the grant or loan award regarding such an appointment.

Please let me know if you would like to discuss this matter further.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
305-579-2594

From: Monestime, Regine [mailto:rmonestime@northmiamifl.gov]
Sent: Friday, March 08, 2013 2:22 PM
To: Centorino, Joseph (COE)
Subject: Question

Joe,
As we briefly discussed yesterday, I had some questions about whether the city council can appoint certain persons to a 501-3. Enclosed are questions and by-laws.
The City council will meet on Tuesday, March 8, 2013, and an answer prior to Tuesday would be most helpful. If you have any questions or need clarification, please do not hesitate to call me. Regards,



Regine M. Monestime
City Attorney

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