
From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, September 29, 2014 9:33 AM
To: Sanchez, Rodzandra (COE)
Subject: Victoria Mendez, City Attorney, City of Miami (Voting Conflicts-Gifts) INQ 14-232

INQ 14-232

From: Mendez, Victoria [mailto:VMendez@miamigov.com]
Sent: Saturday, September 27, 2014 4:23 PM
To: Centorino, Joseph (COE)
Cc: Wysong, George; Diaz-Greco, Gilma M. (COE)
Subject: Re: INQ - Victoria Mendez, City Attorney, City of Miami (Voting Conflicts)

Thank you so much.

Sent from my iPhone

On Sep 26, 2014, at 4:34 PM, "Centorino, Joseph (COE)" <CENTORI@miamidade.gov> wrote:

Ms. Mendez,

In regard to your first question, there would be no voting conflict of interest assuming there is no relationship between the Commissioner or his wife and the Miami World Center project. It is purely speculative at this point to consider whether the real estate firm for which the Commissioner's wife is a certified sales associate may at some future time have a business relationship with the project, and whether the Commissioner or his wife might thereby obtain some benefit. That could change in the event that a relationship does develop, but for now there is no voting conflict under Section 2-11.1(d) of the County Ethics Code, with no relationship between the Commissioner or his wife with the entity involved in the project and no foreseeable way that the Commissioner could profit or be enhanced by voting on the project.

The second possible conflict is a closer issue. You do not state exactly what position the Commissioner presently holds in connection with the not-for-profit which has received contributions from a principal of the World Center Project, when the principal made the contribution or the amount of contribution. In general, the mere fact that an individual has at some time in the past made a contribution to a charitable or non-profit entity associated with an elected official does not create an automatic conflict. Obviously, if there were any contemplated *quid pro quo* or other anticipated influence that motivated the donation, then that could have serious implications as an illegal gift or even a bribe. Additionally, if the Commissioner benefited from the donation personally, it could create a possible conflict. From the facts you have provided, that does not appear to be the case.

It is not necessary that there be an actual financial benefit to an elected official to create a voting conflict of interest under Section 2-11.1(d) of the Count Ethics Code. The possibility that an elected official "would or might, directly or indirectly, profit or be enhanced" by the action of the Commission can create the conflict. It can happen where the enhancement involves some special accolade, honor or recognition for the official. Deciding whether there is such a possible enhancement may be difficult to predict in a given instance, but certainly if there are any outstanding causes which remain pending for which the official has directly solicited the principal on a given project, and which may be linked closely to the Commissioner's status in the community, that would be a factor in deciding whether he should

recuse himself from the vote. The fact that a person whose project will be affected by a particular vote has at some point in the past made a contribution to a non-profit associated with the official should not create a voting conflict.

Assuming that there is no such contemplated influence or benefit, what is left is an appearance or perception issue. The Code is only a minimum standard of ethics. In any given situation, it may be up to the official to decide whether there is a sufficient perception of a conflict that he should recuse himself from the matter to avoid damaging the public trust.

I hope that this guidance proves useful to the Commissioner.

Sincerely,

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

Cc: Wysong, George

Subject: Request for conflict opinion for Monday.

Mr. Centorino,

I am writing on behalf of a City of Miami Commissioner. I would like to know whether an impermissible conflict of interest exists, and if so, whether such conflict would prevent the Commissioner from voting on an item scheduled to be heard at the September 29, 2014, City Commission meeting. A citizen has frivolously suggested that the City Commissioner may have a conflict relating to the City of Miami Commission's consideration of the Miami World Center project. The fact and circumstances relating to the suggestion of conflict are as follows:

1. The commissioner's spouse is a licensed Sales Associate, registered with Cervera Realty, a real estate company in the City of Miami that presently has no contractual relationship with the Miami Worldcenter project; the commissioner's spouse has no interest in the realty company.
2. Mr. Nitin Motwani, one of the principals of the Miami Worldcenter project, may have contributed monies to a not for profit organization that was created by the commissioner for the purposes of fundraising for the City of Miami Police Department for equipment and enhanced police services.

I do not believe that there is a conflict of interest regarding the first point because the commissioner's spouse is not participating in any real estate transaction involving the project. The relationship between the commissioner's spouse and any real estate transaction is too attenuated. There will be no pecuniary benefit to the commissioner or spouse.

I do not believe that there is a conflict in the second instance because the contributions to the not for profit entity did not inure to the benefit of the commissioner.

Please let me know if you require any additional information regarding this request. Time is of the essence as the vote will take place on Monday. Thank you.

Victoria Méndez, City Attorney

 Board Certified, City, County and
Local Government
<image001.jpg> City of Miami Office of the City
Attorney
Telephone: 305-416-1832
Facsimile: 305-416-1801

victoriamendez@miamigov.com

Assistant: Marta Gomez (305) 416-1844

Disclaimer: This e-mail is intended only for the individual(s) or entity(s) named within the message. This e-mail might contain legally privileged and confidential information. If you properly received this e-mail as a client or retained expert, please hold it in confidence to protect the attorney-client or work product privileges. Should the intended recipient forward or disclose this message to another person or party, that action could constitute a waiver of the attorney-client privilege. If the reader of this message is **not** the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited by the sender and to do so might constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. section 2510-2521. If this communication was received in error we apologize for the intrusion. Please notify us by reply e-mail and delete the original message. Nothing in this e-mail message shall, in and of itself, create an attorney-client relationship with the sender. **Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.**

Please consider the environment before printing this e-mail. <image002.jpg>