

Diaz-Greco, Gilma M. (COE)

Subject: FW: INQ - Victoria Mendez, Miami City Attorney (voting conflict)

From: Centorino, Joseph (COE)
Sent: Wednesday, March 19, 2014 9:54 AM
To: 'Mendez, Victoria'; Murawski, Michael P. (COE); Ramos, Miriam S. (COE)
Cc: Min, Barnaby; Wysong, George
Subject: INQ - Victoria Mendez, Miami City Attorney (voting conflict)

Victoria,

Since our jurisdiction is limited to the interpretation and enforcement of the County Ethics Code, I will answer this in the context of that Code's provisions, which apply to municipalities within the County. Any issue concerning the interpretation of an applicable provision of the State Code, which you have correctly identified, should be presented to the Florida Commission on Ethics.

Section 2-11.1(v) of the Miami-Dade County Conflict of Interest and Code of Ethics deals with voting conflicts by advisory board members. There is a voting conflict where a member has a consulting or employment relationship with an entity that has an issue coming before the board, and the board member will be directly affected by the action of the board. This situation falls within a gray area, in my opinion in which the relationship triggering the provisions exists, but it is uncertain how the member will be affected by the vote. However, there is certainly a reasonable prospect of that member's interests being enhanced (or damaged) depending on how that member votes on a matter in which an interested party has a business relationship with that member. This leads to the further concern that Section 2-11.1(j), which prohibits employment by a board member "which would impair his or her independence of judgment in the performance of his or her public duties," could be violated. Based on these concerns, I recommend that the member recuse himself or herself and not vote on the item in question. Where a member is recused, that member should not participate in the discussion or take any action on the item, and should absent himself or herself from the room during the discussion. This opinion is consistent with another opinion recently provided by this office to the County Attorney regarding a similar issue faced by a County advisory board member.

Sincerely,
Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics

-----Original Message-----

From: Mendez, Victoria [<mailto:VMendez@miamigov.com>]
Sent: Tuesday, March 18, 2014 11:00 PM
To: Centorino, Joseph (COE); Murawski, Michael P. (COE); Ramos, Miriam S. (COE)
Cc: Min, Barnaby; Wysong, George
Subject: Voting Question for tomorrow at 1 pm mtg

> Hello all.

> Help please. This following question is in the context of a Board Member of the Urban Design Review Board (UDRB), which is an advisory board (ie. Board of Architects) to the Planning Director of the City of Miami:

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> "May a Board Member vote on a Developer's project coming before the UDRB where the Board Member is employed by the same Developer who is requesting approval of the project before the UDRB in a different jurisdiction and on a different project? Furthermore, the Board Member will not be employed on this project being considered by the UDRB."

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> In reviewing, FS 112.3143(3)(a), it states in pertinent part "that No Public Officer shall vote in an official capacity . . . Which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained . . ." Furthermore, the "the special private gain or loss" is defined in FS 112.3143(1)(d), and considers various factors to ascertain whether the Public Officer receives a gain, such as:

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> 1. Size of the class affected by the Vote. The vote here is a recommendation on the design of the project and the ultimate approval is held by the Planning and Zoning Director.

> 2. Nature of the Interests involved. Here the Board Member is tasked with reviewing the design of a building and opining on it. In this case, the project before the Board was designed by a separate architectural firm that has no relation to the Board Member.

> 3. Degree to which the interest of all Members of a class are affected by a vote. Not clear how this applies.

> 4. Degree to which the officer receives a greater benefit than the other members. Here, the Board Member isn't receiving any direct monetary benefit from the item before them. The board Member does work for the applicant/developer before him on a separate project in Miami Beach. Thus, maybe an appearance of impropriety on other future referrals and his present work.

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> Would you please guide us on the ability of the Board Member to vote on this item, even discuss the item, but not vote or completely recuse himself since he must vote unless recused. The board meeting is tomorrow Wednesday at 1 pm.

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> Thank you.

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> Victoria Mendez

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