
From: Centorino, Joseph (COE)
Sent: Wednesday, March 26, 2014 12:38 PM
To: 'AEGlawyer@aol.com'
Cc: Robert Meyers (RMeyers@wsh-law.com); 'Leen, Craig'; Diaz-Greco, Gilma M. (COE)
Subject: INQ - Alan E. Greenfield, Esq., Attorney for Coral Gables Retirement Board

Mr. Greenfield,

This email will serve to confirm and supplement our recent telephone conversation concerning your request for an opinion regarding whether a City of Coral Gables Ordinance providing that the City's Finance Director serves as both the Trustee of the City's Retirement System as well as a voting member of the Retirement Board, is ethically permissible.

I have reviewed your letter as well as a letter received from Attorney Robert Meyers, submitted on behalf of the City of Coral Gables, as well as a letter issued by C. Christopher Anderson III, General Counsel for the State of Florida Commission on Ethics which addresses the same issue under the State Ethics Code in Chapter 112, Florida Statutes.

As I stated to you in our conversation, this agency has jurisdiction over the Miami-Dade Conflict of Interest and Code of Ethics, as well as other provisions which explicitly authorize its jurisdiction. The question you raise is directed at the structure of the City of Coral Gables Retirement Board as determined under duly enacted ordinances of the City of Coral Gables. Upon review of the issue presented by your letter, I am unable to find any provision of the County Code or other provisions within our jurisdiction which would address the question posed by you. While I understand your concern regarding the independence of the Retirement Board and the possibility that a member might have conflicting loyalties in holding two separate but overlapping public positions, there is no provision of the County Code that would permit us to conclude that a violation of the County Code or Citizens' Bill of Rights has occurred. The ordinance in question is within the purview of the City government of Coral Gables to determine, and it can be amended or repealed within the applicable local government channels. Where there is no County or City provision providing this agency with jurisdiction to determine the validity of such an ordinance, then we are unable to conclude that it violates any ethical ordinance or other provision.

Sincerely,

Joseph M. Centorino

Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
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February 13, 2014

Mr. Joseph Centerino, Executive Director
Miami-Dade Commission on Ethics and Public Trust
19 West Flagler, Suite 820
Miami, Florida 33130

Mailing Address
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Re: City of Coral Gables Retirement System

Dear Mr. Centerino:

I am the attorney for the City of Coral Gables Retirement System. The Board of the System has requested that it obtain from you, your opinion regarding its concerns regarding the ethical considerations and conflicts which are or may be inherent in the matter of the role of the City of Coral Gables Finance Director in relation to her "wearing" several hats, all of which are interrelated.

By Ordinance (50-199), the City's Finance Director serves as the Trustee of the Retirement System. Over the years discussions have taken place as to whether it is proper for the same person to have both positions. Obviously, the Finance Director has a fiduciary relationship with her employer, the City but also has a relationship with the Retirement System, as the Trustee is a defined fiduciary in the ordinance. Nothing has been done to change the ordinance or to legally challenge it, notwithstanding that in the past, the Retirement System Board had actually filed a suit in the Miami-Dade Circuit Court to compel the Trustee to act in accordance with its mandate where its mandate was contrary to the desires of the Finance Director. The suit was settled and the underlying issue of conflict by holding both rolls was not resolved.

However, there is a new wrinkle. The City has amended Ordinance (50-83) which appoints the Finance Director as a voting member of the Retirement Board. Now, the Finance Director continues as the Board's Trustee but now is a Board Member and part of the policy making decisions of the Board. By Ordinance, as a Board Member the person is also a defined fiduciary. (50-33).

For your consideration of this request, you should be advised that the Retirement Board, by ordinance, is probably the most independent of all City Boards and desires to maintain its independence.

2nd pg. Letter CGRS to M-D Commission
on Ethics

Re: City Finance Director/Trustee/Board
Member

February 13, 2014

Simply put, the Board is desirous of knowing whether it is ethical in Miami-Dade County for the person holding the position of City Finance Director to wear 3 hats at the same time, serving 2 masters. Your response and reasoned opinion would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan E. Greenfield", written in a cursive style.

ALAN E. GREENFIELD

cc: Retirement Board
Craig Leen, Esq.
Ms. Diana Gomez

February 26, 2014

Joseph Centorino
Executive Director/General Counsel
Miami-Dade Commission on Ethics and Public Trust
19 West Flagler Street, Suite 820
Miami, FL 33130

Re: City of Coral Gables Retirement System

Dear Joe:

Section 2-1066 of the Miami-Dade County Code establishes the powers of the Miami-Dade County Commission on Ethics with the authority to exercise advisory and quasi-judicial powers. The legislative intent and purpose for the Ethics Commission is educate local public officials and employees as to the required standards of ethical conduct and to enforce these standards of conduct. Within the Commission's jurisdiction is any person required to comply with the County or municipal Code of Ethics Ordinances. Section 2-1072, which enumerates the powers and duties of the Ethics Commission, also provides for the Ethics Commission to periodically review County and municipal Conflict of Interest and Code of Ethics Ordinances, but such review is not extended to other County or municipal ordinances. The request for advisory opinions is delineated in Section 2-1074(y) and states that any person within the jurisdiction of the Ethics Commission when in doubt about the applicability or interpretation of any provision within the Ethics Commission's jurisdiction may submit in writing the facts of the situation to the Ethics Commission with a request for an advisory opinion to establish the standard of public duty. Such opinion, when issued, is binding on the conduct of the official who sought the opinion. Enforcement of the ordinances within the Ethics Commission's purview is limited to investigations against persons bound by the applicable local ethics ordinances.

In a letter dated February 13, 2014, you have been asked by Alan Greenfield, the attorney for the City of Coral Gables Retirement System, to issue an opinion regarding his concerns regarding the ethical issues created by the City Finance Director serving on the System's Board. The chief argument is that by appointing the Finance Director as a voting member of the Retirement Board and simultaneously serving as the Trustee of the Retirement System (see City Ordinance 501-199) a conflict of interest is created because the Finance Director owes multiple fiduciary duties to two different public entities. The reason this matter is before you is the City recently amended Ordinance 50-83 which appoints the Finance Director as a voting member of the Retirement Board.

I respectfully submit to you that the Miami-Dade Commission on Ethics lacks jurisdiction to issue an opinion to the attorney of the City of Coral Gables Retirement System. Prior to addressing the reasons why such jurisdiction is lacking, I want to alert you to an opinion issued by C. Christopher Anderson, General Counsel /Deputy Executive Director of the State of Florida Commission, (which I forwarded to you in an earlier e-mail) wherein he concludes that the situation described by Mr. Greenfield does not fall within the jurisdiction of the State of Florida Commission on Ethics. Although Mr. Anderson's

opinion is not binding on the Miami-Dade Commission on Ethics and Public Trust, my contention is that for similar reasons, the Miami-Dade Commission on Ethics should reach the same conclusion.

Specifically, the purpose of a binding advisory opinion issued by the Miami-Dade Commission on Ethics is to offer guidance to individual public officials or employees concerning the applicability of the County or municipal ethics ordinance to that person's individualized set of circumstances. In order for the Ethics Commission to issue an opinion, a question concerning one of its provisions must be put forward by a requester who is uncertain about the applicability of the local ethics code to his/her particularized set of facts. In the instant case, the City Finance Department has not requested an opinion from your office. Consequently, the Ethics Commission should decline to issue an opinion on this matter because the requester, Mr. Greenfield, lacks standing to request an opinion on behalf of the City Finance Director. Secondly, the advice-giving function and enforcement authority granted to the Ethics Commission only apply when an individual has questions about his or her contemplated conduct or, alternatively, if a party has reason to believe that an individual public official/employee may have engaged in misconduct in violation of the local ethics ordinance. Once again, the letter before you does not point to specific provisions of the local ethics ordinance breached by the City Finance Director when sitting in her capacity as a Board member. Rather, the letter indicates that a generic conflict of interest is created by the appointment, which to my way of thinking, takes the issue out of the advice-giving or enforcement realm of the Ethics Commission. Therefore, the only other avenue that could be considered is for the Ethics Commission to offer advice on this matter because under its review powers, the Commission can review certain local, state and federal ethics laws. With respect to the Coral Gables Retirement Board, the City possesses the singular authority to determine the composition of its boards. The City of Coral Gables by creating a retirement system and a retirement system board to implement the objectives of the enabling ordinance has not established an ethics ordinance subject to review by the Miami-Dade Commission on Ethics. Moreover, the power to create municipal boards and determine the appointments to its boards vests with each municipality and is not subject to review by the Ethics Commission.

For all of the abovementioned reasons, we respectfully submit to you that the Ethics Commission does not possess the authority to take the action requested by Mr. Greenfield due to lack of jurisdiction over this subject matter. If you conclude that the Miami-Dade Commission on Ethics has jurisdiction over this matter, I would like to be given an opportunity at a later date to set forth arguments on the merits of the case why an opinion from the Miami-Dade Ethics Commission should find no conflict of interest in this situation.

Sincerely,

Robert Meyers, Esq.
Special Counsel to City of Coral Gables

cc: Craig Leen, City Attorney, Coral Gables

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C. Christopher Anderson, III
*General Counsel/
Deputy Executive Director*

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"A Public Office is a Public Trust"

February 19, 2014

Alan E. Greenfield, Esquire
Law Offices of Alan E. Greenfield
P.O. Box 801706
Aventura, FL 33280-1706

Re: Your letter received February 17 (City of Coral Gables Retirement System)

Dear Mr. Greenfield:

Having read your letter, I do not believe it describes a situation within the jurisdiction of the State of Florida Commission on Ethics. Rather, it appears to concern matters involving substantive policy choices made via local ordinances regarding the makeup and operations of the City's Retirement System, the System's Board, and various related fiduciary responsibilities. These matters would appear to be addressable by the courts, ordinance modification, system administration or other forums or mechanisms other than the Commission on Ethics. In other words, the Commission on Ethics is not empowered to second-guess the wisdom of ordinances impacting the System or of decisions made by System actors, or to address fiduciary concerns not implicating a specific standard of conduct in Part III, Chapter 112, Florida Statutes.¹

¹ The "wearing of two hats" (or the "serving of two masters") in relation to the same subject matter, as referenced in your letter, certainly is a dynamic recognized in caselaw and Commission on Ethics decisions. See, for example, Zerweck v. State Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982). However, not all situations that may, or may not, be logically conflicting are addressed by a standard of conduct within the State Code of Ethics. For example, the prohibition at issue in Zerweck is Section 112.313(7)(a), Florida Statutes, which prohibits a public officer or a public employee from holding a conflicting employment or a conflicting contractual relationship. But, the prohibition is modified by Section 112.313(7)(b), Florida Statutes, which, in essence, waives a Section 112.313(7)(a) conflict if a law or ordinance specifies that a public officer (e.g., a Board Trustee/Member) hold a certain position or occupation (e.g., Finance Director). See, among others, CEO 91-13, viewable at www.ethics.state.fl.us (go to the website, go to Research, go to Advisory Opinions, go to the year, and go to the particular numbered opinion). Also, an officer's holding of another office, as opposed to the officer's holding employment or a contractual relationship, has not been found by the Commission to be within the contemplation of Section 112.313(7)(a). See, for example,

Alan E. Greenfield, Esquire
February 19, 2014
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Please telephone me if you have any questions.

Sincerely,



C. Christopher Anderson, III
General Counsel/Deputy Executive Director

CEO 92-39. And, Sections 112.3125 and 112.313(10), Florida Statutes, apparently are not implicated by the facts of your letter.
