
From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, April 14, 2014 12:57 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: Ethics Opinion- Board Conflict INQ 14-94
Attachments: advisory board powerpoint.pptx

INQ 14-94

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, April 14, 2014 12:56 PM
To: 'Pepe, Thomas F.'
Cc: Centorino, Joseph (COE)
Subject: Ethics Opinion- Board Conflict INQ 14-94

Mr. Pepe,

You have inquired about a possible board conflict.

As background, the City of South Miami (City) has entered into a development /FLUDRA agreement with Metro South (Metro), a real estate developer. Pursuant to that agreement, Metro has agreed to give the City a landscaping covenant. Metro hired a landscape architect as a subcontractor (Architect) to prepare a landscaping plan under that agreement. The landscaping plan has been presented to the City's Environmental Review and Preservation Board (ERP) and has been approved. However, revisions to the plan may still be needed. These revisions would come before ERP for approval. The City would like to appoint the Architect who prepared Metro's landscape plans to the ERP and you have inquired whether this would pose a conflict of interest under the Ethics Code.

The Ethics Code would generally not prohibit the appointment of a board member, unless the appointment would cause such a severe conflict as to cause an instant and irrevocable conflict between the appointee's private interests and public duties. In most instances the County Ethics Code places limitations on board members once they have been appointed. Under the facts presented here, the Ethics Code would not prohibit the appointment to the ERP of an Architect who is a subcontractor of Metro. However, once appointed, he would be subject to several limitations that the Ethics Code places on board members during the time of their board service:

Sec. 2-11.1 (c)(3) prohibits the Architect from entering into a contract with the ERP if the ERP would oversee the contract. *See also* South Miami City Code at Sec. 8A-1(b)(3)

Sec. 2-11.1 (m)(2) prohibits the Architect from appearing in front of the ERP either directly or through an associate seeking benefits for himself or others from the ERP. Nor is the Architect allowed to receive compensation, directly or indirectly or in any form, for services rendered to Metro if Metro were to seek some benefit from the ERP during the time of the architect's board service.

Sec. 2-11.1 (v) prohibits the architect from voting on matters before the ERP if he would be directly affected by the vote *and* he has one of the following relationships with any person or entity appearing before the ERP board: officer, director, partner, of counsel, consultant, employee, fiduciary, stockholder, bondholder, debtor or creditor.

In your inquiry you also refer to a previous response by Mr. Centorino which discussed Section 2-11.1(o). This section of the County Ethics Code prohibits sitting board members from *acquiring* financial interests if the board member believes or has reason to believe that the financial interest will be directly affected by his actions or by official actions of the agency of which he is an official. It is prospective in nature and its intent is to prohibit board members from using their

board service to acquire new financial interests as a result of their service on a board. Therefore, it would not apply here where the board member has yet to be appointed, but would be an additional limitation on the Architect should he be appointed.

You should also be aware that Fla. Stat. 112.313(7) may be applicable in these circumstances. This statute prohibits a public officer or employee from having a contractual relationship or employment with an agency or business entity that is subject to the regulation of, is doing business with the officers agency , or that will create a continuing or frequently recurring conflict of interest; or that would impede the "full and faithful discharge" of public duties. For a binding interpretation of this statute we refer you to the Florida Commission on Ethics. Their website is at: <http://www.ethics.state.fl.us/>

I have attached a Power Point Presentation used at board trainings which you may find informative.

Best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust
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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]

Sent: Thursday, April 03, 2014 1:33 PM

To: Diaz-Greco, Gilma M. (COE)

Subject: RE: Ethics Opinion re Board member doing business with entity who may need Board's review of entities application

The ERPB's primary function is to review site plans for all construction permits. "Site plans ... shall be submitted for review and approval by the environmental review and preservation board prior to the issuance of a permit for: (1) Any new building or other structure which is visible from any public or private street; and (2) Any material alterations to an existing building or other structure which is visible from any public or private street. In addition, the board reviews all signs, landscaping, and residential second story additions.

Very truly yours,

Thomas F. Pepe

City Attorney
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From: Diaz-Greco, Gilma M. (COE) [<mailto:GDIAZGR@miamidade.gov>]

Sent: Monday, March 31, 2014 4:24 PM

To: Pepe, Thomas F.

Subject: RE: Ethics Opinion re Board member doing business with entity who may need Board's review of entities application

Mr. Pepe,

It was a pleasure speaking with you recently. I am in the process of reviewing this matter and have a question. Would you please describe the function of the ERPB and its board members?

Thank you.

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]

Sent: Tuesday, March 04, 2014 12:33 PM

To: Diaz-Greco, Gilma M. (COE)

Subject: RE: Ethics Opinion re Board member doing business with entity who may need Board's review of entities application

The following is an ethics opinion that I received regarding a planning board member who was entering into a contract with an entity that was submitting its qualification for an award of a project by the City. I do not know if it is applicable to the opinion that I am currently seeking but I am sending it to you so that if it is not applicable you can explain the distinction between the two situations.

From: Centorino, Joseph (COE) [CENTORI@miamidade.gov]

Sent: Friday, February 22, 2013 2:07 PM

To: Pepe, Thomas F.

Subject: INQ - Thomas Pepe, City Attorney, City of South Miami

Mr. Pepe:

You have requested an opinion concerning whether Mr. Luigi Vitalini, who currently sits as a member of the City of South Miami Planning Board, has a prohibited conflict of interest in connection with his involvement as an architect working with a firm that is responding to a Letter of Request for Qualifications to be the developer of a mixed use development project in the City of South Miami. Mr. Vitalini is an architect by profession and would be contracting with the firm to provide architectural services in the event that the project were to be approved. At some point in the process the project would go before the Planning Board for approval.

This issue is governed by Section 2-11.1(o) of the Miami-Dade County Conflict of Interest and Code of Ethics, which provides that a public official, including a person serving on an advisory board, such as the Planning Board, may not acquire a financial interest in a project when that person believes or has reason to believe that the financial interest will be directly affected by his or her official actions or by official actions of the agency of which he or she is an official. Since his contractual relationship with the firm responding to the RFQ would amount to a "financial interest," and because that financial interest would be directly affected by the action of the Planning Board to approve or disapprove the project or some phase or aspect of the project, I have concluded that Mr. Vitalini may not acquire such an interest while a member of the Planning Board. At such time as Mr. Vitalini enters into a contract with such an entity he should not be a member of the Planning Board.

I would be happy to discuss this further with you.

Joseph M. Centorino

Executive Director and General Counsel

Miami-Dade Commission on Ethics and Public Trust

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Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney
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From: Diaz-Greco, Gilma M. (COE) [<mailto:GDIAZGR@miamidade.gov>]

Sent: Tuesday, March 04, 2014 8:49 AM

To: Pepe, Thomas F.

Subject: RE: Ethics Opinion re Board member doing business with entity who may need Board's review of entities application

Mr. Pepe,

I am in receipt of your email. We will review this matter and call you if we have any questions.

Best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]

Sent: Monday, March 03, 2014 5:57 PM

To: Diaz-Greco, Gilma M. (COE)

Cc: Stoddard, Philip K.; Menendez, Maria M.

Subject: Ethics Opinion re Board member doing business with entity who may need Board's review of entities application

The City has entered into a development/FLUDRA agreement with Metro South and, pursuant to that agreement, Metro South has agreed to give the City a landscaping covenant and a taxation covenant.

May the City appoint Metro South's landscaping contractor to the City's Environmental Review and Preservation Board ("ERPB") if it is conceivable that the ERPB might need to review some of the plans that are designed by that contractor.

Very truly yours,

Thomas F. Pepe

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