



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Chairman Nelson C. Bellido
Vice-Chair Judith Bernier
Commissioner Lawrence A. Schwartz
Commissioner Wifredo “Willy” Gort
Commissioner Charlton Copeland

FROM: Martha D. Perez, General Counsel
Leyana Quintero, University of Miami Certified Legal Intern

SUBJECT: RQO 21-02: Laura Morilla, Board Liaison, Interfaith Advisory Board, *See* County Ethics Code at Sec. 2-11.1(i)

DATE: June 9, 2021

I. ISSUE

Whether current members of the Miami-Dade County’s Interfaith Advisory Board (IAB) are required to file a financial disclosure statements for the 2020 calendar year pursuant to Section 2-11.1(i) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (hereinafter “County Ethics Code”).

II. BACKGROUND

This issue arose from an inquiry submitted by Laura Morilla, Executive Director of Miami-Dade County Office of Community Advocacy and IAB Liaison, into the financial disclosure filing requirements for County advisory board members as provided in Section 2-11.1(i) of the County Ethics Code. Ms. Morilla proffered that the IAB was not a complete board in 2020 and therefore could not meet or take any official action, individually or collectively, to trigger the financial disclosure statement requirement from its board members.

The COE has opined that members of advisory boards must abide by the financial disclosure requirements of Section 2-11.1(i) even if their respective boards did not meet during the preceding year. *See* RQO 13-01

The COE's formal opinion fails to consider the situation where a board member cannot meet due to a legal impediment set forth in the County Code. Hence, as this is an issue of first impression to the Commission, we issue this memorandum to assist the COE in rendering formal guidance on this specific issue.

III. ANALYSIS

Last year, the Board of County Commissioners of Miami-Dade County passed an ordinance creating the Interfaith Advisory Board (IAB), to “encourage greater understanding, respect, and cooperation among diverse faith-based, religious, and spiritual groups, institutions, and people in Miami-Dade County.” Sec. 2-221-2-226 of Article XXIVA, Miami-Dade County Code of Ordinances

Specifically, Section 2-223(d) of the IAB's enabling ordinance provides that a quorum shall be required to transact business or exercise *any* power of the Board. A quorum shall consist of a majority of the appointed members, **provided at least one half of the full membership has been appointed.** *See also* Section 2-11.39.1, Miami-Dade County Code

The COE derives its authority to interpret local ordinances from its enabling ordinance. Section 2-1072 of the Miami-Dade County Code of Ordinances grants power to the COE to interpret the County and municipal Code of Ethics Ordinances, Conflict of Interest Ordinances, Lobbyist Registration and Reporting Ordinances, Ethical Campaign Ordinances, and the Citizen's Bill of Rights. While this Commission is not empowered to interpret Sections 2-223 or Section 2-11.39.1 of the Miami-Dade County Code, the sections should be read in *pari materia* to Section 2-11.1(i) of the County Ethics Code.

Section 2-11.1(i) of the County Ethics Code requires all County board members to file a financial statement/source of income annually. This Commission has opined that board members are required file the form, even if the board does not meet during the relevant year. RQO 13-01. Thereafter, COE has issued informal ethics opinions citing to RQO 13-01 for the determination

that all County advisory board members must disclose their financial interests for the year in which they have served or *have been able to serve* on the County board.¹

The disclosure requirement is meant to increase transparency and dispel any conflicts of interest that may arise. RQO 13-01. Individual members who are authorized to serve in an advisory capacity during any given year may be subject to conflicts of interest or undue influence because of their potential service or their *ability* to serve. *Id.* Thus, this Commission reasoned that disclosure was proper. *Id.*

An individual's ability to serve means the individual has the authority to act. This requires that the individual be empowered to act on behalf of the committee he or she serves. For example, in INQ 16-81, Commission staff issued an informal opinion which concluded that a County board member, although appointed to a board, would nevertheless not be considered a "member" triggering financial disclosure obligations unless and until he took the oath of office. Consequently, just like an appointee cannot be a member until he or she accepts that appointment, it follows that a board appointee cannot fulfill his duties and responsibilities as a member unless the board he is appointed to meets the quorum requirement, i.e., is half-full.

If the committee itself cannot act, neither can the individual. Thus, the individual has no authority and therefore no ability to serve. To illustrate this principle, we can look to incorporation documents in the context of corporations.

A corporation, much like a committee, acts by action of the board of directors. A board is a governing body that typically meets at regular intervals to set policies for corporate management and oversight. Myles L. Mace, *The President and Board of Directors*, (1972), <https://hbr.org/1972/03/the-president-and-the-board-of-directors>. The structure and powers of a board are determined by an organization's bylaws. Bylaws can set the number of board members, the way the board is elected (e.g., by a shareholder vote at an annual meeting), and how often the board meets. *Id.*; *See e.g.*, Del. Gen. Corp. Law §141(b). A corporate board, like the committee at issue here, must act by quorum. This requires a majority of the total number of directors designated in the bylaws. Without such majority, no action can be taken unless the bylaws or articles of incorporation provide for something different.

¹ *See* INQ 13-77 and INQ 16-45 (board members must file financial disclosure forms for the years they were *able* to participate, even if they did not actually participate)

Here, the IAB shall be comprised of 27 voting members. Section 2-222, Miami-Dade County Code. The Board's charter document requires a quorum "to transact any business or exercise any power vested in the IAB."² **A quorum for the IAB shall consist of a majority of those persons duly appointed to the board, provided that at least half of the full board membership has been appointed.**" Sections 2-11.39.1 and 2-223, Miami-Dade County Code. The number of board members in 2020 was and remains seven (7). Therefore, before they are able to serve, i.e., transact any business or exercise any power, the board must have at least fourteen (14) members.

Accordingly, the board as a whole does not have the capacity to take any action. It follows then that the individual members are also powerless to act in any official capacity. This conclusion is further solidified by §5.03 of Miami-Dade County's Board of County Commissioners' Rules of Procedure which reiterate that no action can be taken if there is no quorum. Thus, this situation is distinguishable from RQO 13-01. There, the individual members had the ability to meet and act but chose not to. Here, the Board does not even have the requisite number of members to meet or act.

This distinction is not just recognized by this Commission. "Conflicts of interest may occur when public officials are in a position to make decisions that affect their personal financial interests." *Guide To The Sunshine Amendment And Code Of Ethics For Public Officers And Employees Ethics Committee Of Florida*, § F.

Since these individual board members do not have the authority to act in an official capacity, either as a body or as individuals, they are not currently subject to undue influence or conflicts of interest as public officials. Therefore, the financial disclosure provision does not apply to the seven board members for calendar year 2020.

IV. RECOMMENDATION

It is recommended that this Commission render a formal opinion regarding the applicability of Section 2-11.1(i) to the members of the IAB for the year of 2020, and conclude that, the IAB members are not required to file financial statements for calendar year 2020 since they were not

² The term "quorum" is defined as "the minimum number of members (usually a majority of all the members) who must be present for a deliberative assembly to legally transact business." Black's Law Dictionary 1284 (8th ed. 2004)

legally able to serve (participate and/or vote) as a result of the absence of minimum membership on the board. In the event that the IAB reaches minimum membership under Sections 2-223 and/or Section 2-39.1 of the Miami-Dade County Code (which give the board the ability to serve, whether it opts to meet/ participate or not), then it shall abide by the financial disclosure requirements of Section 2-11.1 (i) of the County Ethics Code.