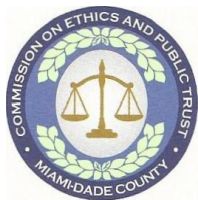


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 9, 2024

Via Facsimile Only: jkelly@opalockafl.gov

Honorable Joseph L. Kelley
Commissioner
City of Opa-locka
780 Fisherman Street
Opa-locka, FL 33054

Re: INQ 2024-05, Vote to Terminate Interim City Manager and Propose New Hire
Section 2-11.1(d), Voting Conflict, Miami-Dade Code, and Section 2-11.1 (g),
Exploitation of Official Position, Miami-Dade Code

Dear Commissioner Kelley:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for seeking guidance regarding the application of Section 2-11.1 of the Miami-Dade Code (“County Ethics Code”) to your participation and vote on an upcoming Opa-locka City Commission agenda item.

Background:

Commissioner Joseph L. Kelley seeks guidance regarding the application of the County voting conflict provision contained in Section 2-11.1(d) of the Miami-Dade Code, as applied to the prospective consideration and vote on a resolution to terminate the employment of Interim City Manager Darvin Williams, and to appoint a new Interim City Manager.¹ The proposed Interim City Manager is married to Commissioner Kelly’s second cousin.

Issue:

Whether a city commissioner is prohibited from participating or voting on an agenda item to terminate the interim city manager and hire a new interim city manager who is married to the commissioner’s second cousin.

¹ Agenda Item 13.5, Opa-locka Commission Meeting of January 10, 2024.

Brief Answer:

Section 2-11.1 (d) of the Miami-Dade Code (County Ethics Code) permits a city commissioner to participate and vote and on a matter before his board terminating an interim city manager and hiring a new interim city manager who is married to the commissioner's second cousin.

Relevant Facts:

Joseph L. Kelley is an Opa-locka Commissioner. He is the sponsor of an item scheduled for consideration and vote of his board that would terminate the employment of the current Opa-locka Interim City Manager, Darvin Williams. Additionally, he would like to propose the hiring of a new Interim City Manager. The new Interim City Manager is married to Commissioner Kelly's second cousin.

Commissioner Kelly further advises that while he knows the proposed Interim City Manager, he has no direct or indirect financial relationship of any kind with the proposed new hire.

Also, the Commissioner advises that the proposed hire is objectively qualified to hold the position.

Legal Analysis:

As a preliminary matter, the County Ethics Code is applicable to County officials and personnel and also constitutes the minimum standard of ethical conduct and behavior for all municipal officials including City of Opa-locka elected officials.²

The voting conflict provision contained in Section 2-11.1(d) of the County Ethics Code provides as follows:

... [N]o [County Commissioner] shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person ... in a manner distinct from the manner in which it would affect the public generally.

Any [Commissioner] who has any of the above relationships *or who would or might, directly or indirectly, profit or be enhanced by the action* of the Board of County Commissioners shall absent himself or herself from the commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (*emphasis added*)³

² Section 2-11.1(a), Miami-Dade Code.

In previous opinions, the Ethics Commission, as determined that this voting conflict restriction is stricter than the state law standard codified in Section 112.3143 (1)(d), Florida Statutes, which provides that “No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss...”⁴

Therefore, given the enhanced voting conflict prohibition contained in the County Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in instances where an official might, directly or indirectly, profit or be enhanced by a vote.

More specifically, the words “might” and “enhanced” when used in the voting conflict provision prohibiting an official from voting on a matter when he or she “would or might, directly or indirectly, profit or be enhanced” denote a reasonable probability of profit and a benefit broader in concept than a measurable financial profit and includes an improved professional or social position.⁵

The County Ethics Code does not contain an anti-nepotism clause, nor does it explicitly address nepotism.⁶ Consequently, the Ethics Commission has considered official action by elected officials involving the hire of family relations under the general exploitation provision found at Section 2-11.1 (g) of the County Ethics Code.

Notably, Section 2-11.1(g) of the County Ethics Code, which prohibits county and municipal officials from using their public positions to secure special privileges or exemptions for themselves, or others, except as has been permitted by other ordinances, has been interpreted to bar officials from any action involving hiring, promoting, or advocating for the advancement of an immediate family member. Immediate family members are defined as: spouse, domestic partner, parents, stepparents, siblings, half-siblings, stepsiblings, children, and stepchildren.⁷

While Section 2-11.1(g) does not bar officials from hiring or promoting more distant family members, it has been interpreted to impose limitations on hiring and supervision of these relatives and close friends.

³ Section 2-11.1(a) of the Miami-Dade Code provides that the County Ethics Code applies to municipal officials who serve in comparable capacities to County officials and thus the prohibitions contained in subsection (d) apply to City Commissioners in the same manner as they apply to County Commissioners.

⁴ INQ 14-86

⁵ RQO 15-04

⁶ See RQO 01-78; INQ 22-139; INQ 22-89; INQ 22-03.

⁷ Section 2-11.1(b)(9), Miami-Dade Code.

As regards hiring, the Ethics Commission has interpreted Section 2-11.1(g) to require objectivity when hiring distant relatives. For example, in RQO 01-78, the Ethics Commission opined that an elected official could hire her husband's cousin as her chief of staff because other candidates were interviewed and there was no showing that the relative by marriage received any special benefit. Similarly, in INQ 18-148, the Ethics Commission opined that this section permitted a village manager to hire a distant relation as an assistant manager, so long as the hiring was based on objective factors and not the familial relation.

As regards the supervision, in INQ 2023-51, the Ethics Commission cautioned that if an assistant department director will not be able to supervise a close friend fairly or equitably, then he should consider a delegation of his work authority over the friend. Also, in INQ 2022-03, the Ethics Commission likewise suggested that an assistant department director should recuse himself from involvement in personnel related actions decisions which might affect his sister-in-law, including performance evaluations or ratings, and instead to delegate that authority to another supervisor.

Conclusion:

Section 2-11.1(d) of the Miami-Dade Code allows a city commissioner to participate and vote on an item to terminate an interim city manager and to recommend for hire as a new interim manager a person who is married to his second cousin and with whom the commission has no direct or indirect financial relationship. On the facts provided, it does not appear as though the commissioner would or might, directly or indirectly, profit from the action of his board.

Moreover, even under the local voting conflict provision that is more restrictive than the state law standard, any improved professional or social standing that may flow from the hiring of the spouse of a second cousin is too remote or speculative to prohibit a vote.

Also, Section 2-11.1(g) of the Miami-Dade Code would not prohibit the commissioner from participating and voting on the item as the person who is proposed as the new interim city manager is only related by marriage to the commissioner's a distant family relation, a second cousin, and is otherwise qualified to hold the position.

This opinion is limited to the facts you presented to the Commission on Ethics and no investigation has been conducted by this agency. Moreover, the opinion is limited to an interpretation of the County Ethics Code and is not intended to interpret state laws. Additional guidance regarding their application should be addressed to the Florida Commission on Ethics.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jose J. Arrojo', is written over a faint, larger version of the same signature.

Jose J. Arrojo
Executive Director

cc: Burnadette Norris-Weeks, Esq.
Opa-locka City Attorney
Via email only: cityattorney@opalockafl.gov

All Commission on Ethics Attorneys

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.