



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Imran Ali
Executive Director
The Children's Trust

FROM: Martha D. Perez
Temporary Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-102; Voting Conflict §2-11.1(d)

DATE: June 5, 2024

CC: All COE Legal Staff; Leigh Kobrinski, Assistant County Attorney

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (COE) and requesting our guidance concerning procedures which may be followed when a board member announces a voting conflict during the Consent Agenda section of a Children's Trust board meeting.

Background

At a recent meeting of The Children's Trust board (TCT), an issue arose during the Consent Agenda where two board members announced a voting conflict regarding items included in the Resolutions being presented and recused themselves from the (single) vote. ¹

Thereafter, Staff made a presentation of the Resolutions followed by discussion, questions, and comments from board members. ² One of the "conflicted" ³ board members sought

¹ While they recused themselves from the vote, they remained in the meeting room as permitted by TCT Bylaws.

² One of the board members who had recused himself did not comment on his affected item but rather made a general comment during the discussion phase of the Consent Agenda.

³ The term "conflicted" is used throughout this opinion to describe a board member who has announced a voting conflict.

clarification on how to proceed with discussion of the Consent Agenda items when a board member recuses himself on one of the Resolutions contained therein.⁴

May 13, 2024 Board Meeting of The Children's Trust

Written notice of regular meetings of the Board shall be given to each member at least seven days before each meeting, or such lesser time as may be permitted under applicable law. *See* Art. III, Section A.2, TCT Bylaws. Said notice shall be accompanied by an agenda specifying the purpose of the meeting; if not possible, the agenda shall be distributed at the meeting. *See id.*

At the May 13, 2024, TCT board meeting, the Consent Agenda included Resolutions 2024-37 through 2024-40 which supported parents/caregivers and their children with research - informed or evidence-based program (EBP) strategies: Resolutions 2024-37 (Parenting and Family Strengthening)⁵, 2024-38 (Family and Neighborhood Support Partnerships)⁶, 2024-39 (Health Public Benefits Enrollment)⁷ and 2024-40 (211 Helpline)⁸

⁴ Generally, items appearing on a meeting's Consent Agenda section consist of routine matters which are non-controversial, follow past policy or direction and do not require explanation or discussion. These items are voted on as a single item in order to save time.

⁵ Resolution 2024-37: Authorization to *negotiate and execute contracts with 45 providers*, identified herein, to deliver evidence-based parenting and family strengthening services in a total amount not to exceed \$23,230,563.00, each for a term of 12 months, commencing October 1, 2024, and ending September 30, 2025, each with three remaining annual renewals, subject to annual funding appropriations. Request for delegation of authority to adjust paid program partners.

⁶ Resolution 2024-38: Authorization to *waive the formal competitive procurement process and to negotiate and execute contract renewals with 22 providers*, identified herein, for Family and Neighborhood Support Partnerships, in an amount not to exceed \$13,408,796.00, and for The Children's Trust to encumber a purchase order in the amount of \$500,000.00 for pooled family stabilization funding, for a total amount not to exceed \$13,908,796.00, for a term of 12 months, commencing October 1, 2024, and ending September 30, 2025, with two remaining contract renewals. Request for delegation of authority to adjust paid program partners.

⁷ Resolution 2024-39: Authorization to *waive the formal competitive procurement process and to negotiate and execute contracts with nine providers*, identified herein, to deliver public benefits enrollment supports, in a total amount not to exceed \$1,596,882.00, for a term of 12 months, commencing October 1, 2024, and ending September 30, 2025, each with three remaining annual renewals, subject to annual funding appropriations. Request for delegation of authority to adjust paid program partners.

⁸ Resolution 2024-40: Authorization to *negotiate and execute a single source contract* with Jewish Community Services of South Florida (JCS) to operate the 211 Miami helpline, for a term of 12 months, commencing October 1, 2024, and ending September 30, 2025, in a total amount not to exceed \$1,374,176.00.

Issue

Whether a board member who announces a voting conflict on a Resolution that is part of the Consent Agenda, may *participate* on the discussion of other Resolutions that are part of the Consent Agenda as long as the board member refrains from speaking on his or her particular Resolution.⁹

Analysis

For purposes of this guidance, this office will assume that a board member has already certified a voting conflict under Section 2-11.1(d) of the County Code or The Children's Trust Bylaws of his or her own volition or pursuant to a legal or ethics guidance.

I. Jurisdiction

The Children's Trust is regulated by the Conflict of Interest and Code of Ethics Ordinance found at Section 2-11.1 of the Miami-Dade County Code. Consequently, this office may consider and opine on whether a TCT board member has a conflict of interest pursuant to the County Ethics Code, affecting his or her **participation and vote** on official action of the board. *See* RQO 19-06

The Children's Trust Conflict of Interest and Code of Ethics Policy states, *inter alia*, that a board member shall not vote on any matter presented to the TCT Board if the member will receive a direct financial benefit from the board action. TCT's Bylaws also provide that, "Board members will act in such a manner to avoid the appearance of impropriety. No member shall serve as a staff member of any agency when The Children's Trust provides more than fifty (50) percent of the agency's budget, and The Children's Trust's funds may pay no portion of a Board member's salary."

A. Section 2-11.1(d), Miami-Dade County Conflict of Interest and Code of Ethics-Voting Conflict

The County Ethics Code at Section 2-11.1(d), establishes a voting conflict if:

- 1) The board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, etc.) with any entity affected by the vote;

¹⁰

⁹ This office learned that in the Consent Agenda section of the TCT meeting, Staff will make a presentation of all the Resolutions included therein which presentation may be followed by discussion of all the Resolutions *irrespective of the order in which they were presented*.

¹⁰ An automatic voting conflict arises when the board member has a prohibited relationship with the entity *affected* by the Resolution. Notwithstanding, Memorandum re RQO 19-04 sets forth a "minor allocation" exception to the voting conflict in Section 2-11.1(d) of the Ethics Code: "a [TCT member] that serves in a primary enumerated position with an entity, may vote on an overall budget item when the budget provides funding to [the]entity, *if the funding allocation is very minor compared to the overall budget...* In this scenario, the "conflicted" board member may participate and vote only if the funding allotted to his or her item is very minor compared to the overall funding

- 2) The board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it would affect the public generally; and,
- 3) The board member might, directly or indirectly, profit or be enhanced by the board action. *See* RQO 15-04.¹¹

No person who satisfies any of the above conditions “shall vote or participate in any way in any matter presented to the [board].¹²

B. Article VI, The Children’s Trust Bylaws - Conflict of Interest

TCT Bylaws address voting conflict procedures for board members with an emphasis of avoiding an appearance of impropriety:

1. A Board member, prior to voting on a funding issue that involves any program or agency in which he or she participates as an employee or member of the governing authority, shall disclose his or her interest in said program or agency and file a disclosure statement with the Clerk of the Board. If a member of the Board has declared a conflict of interest, the member shall abstain from speaking or voting on such issue. However, the member does not need to leave the room during the discussion.
2. Members of the Board shall comply with all state and local laws relating to conflicts of interest.
3. In accordance with The Children's Trust's Conflict of Interest and Code of Ethics Policy, at all times, Board members will act in such a manner to avoid the *appearance of impropriety*. No member shall serve as a staff member of any agency when The Children's Trust provides more than 50 percent of the agency's budget, and The Children's Trust's funds may pay no portion of a Board member's salary.

allocation of the specified Resolution and not compared to all the Resolutions included in the Consent Agenda.

¹¹ While this section of the County Ethics Code applies to the mayor and members of the Board of County Commissioners (BCC), by implication, members of The Children’s Trust board may be included for purpose of analysis because, as an independent special district, the role and authority of TCT members mimics the role of the BCC, as ultimate decision-makers of procurement or other transactional matters.

¹² The term “participation” covers any discussion, question-and-answer, comment, meeting, and/or workshop where the affected item is addressed by the board member and/or will be voted upon. “Participation” by its very meaning does not contemplate the mere presentation or introduction of a Resolution by Staff.

C. The Children’s Trust Heightened Appearance of Impropriety Standard

We cannot ignore the heightened appearance of impropriety standard imposed on all TCT board members pursuant to TCT Policy and Bylaws. *See id.* This heightened appearance of impropriety ethical standard should be enough to avoid participation and/or vote on an item connected to the entity where the board member is employed or serves. *See* INQ 16-273 (finding that the vice-president of the bank where TCT has account may serve on the board but may have a voting conflict in the future regarding issues connected in any way to TCT’s relationship with the bank because, even if there is no financial interest on the part of the board member, the existence of a heightened appearance of impropriety ethical standard should suffice).

II. Consent Agenda

As stated herein, a Consent Agenda is a way to deal, in **a single motion and a single vote**, with routine, non-controversial items, in order to expedite meetings and reserve time for matters that need to be discussed. Items/Resolutions included on a Consent Agenda should generally consist of non-controversial items that do not require much, if any, discussion. The Consent Agenda allows decision-makers to group such items together under one heading and decide them at one time.

The most common information captured in Consent Agendas includes: approval of minutes from the previous meeting; committee or staff reports; financial reports; presentation of information that requires no action; appointment schedules (upcoming meetings dates, etc.); action items that adhere to bylaws; updates to organizational information (mailing address, phone number, correction of typographical errors, etc.); revision of routine policies (updating dates, contact information, etc.); action items discussed in detail previously that await a final vote.¹³

Notably, local agencies typically have a procedure for removing an item from a Consent Agenda for separate discussion. This enables the item to be considered and voted upon separately if discussion is needed or if a decision-maker needs to not vote on that item because of a disqualifying conflict of interest.¹⁴ If there is a conflict of interest related to an item, it must be removed from the Consent Agenda so the conflict can be noted and the member in conflict can abstain from [participating and] voting. It is not possible to abstain from voting on individual items on the consent agenda.¹⁵

¹³ See <https://resources.foundant.com/blog/consent-agendas-what-they-are-and-how-to-use-them>

¹⁴ See <https://www.ca-ilg.org/resource/concept-consent-calendar>

¹⁵ See <https://www.nosm.ca/wp-content/uploads/2021/05/2021-Memorandum-Consent-Agenda-AC.pdf>

The Children’s Trust Meeting Agenda (Consent items included) is sent to all board members with time to review and determine whether they have a voting conflict or should seek legal and/or ethics guidance concerning a perceived voting conflict. Notwithstanding, board members may “pull” an item from the Consent Agenda to the board’s Non-Consent or Regular Agenda.¹⁶

III. Voting Conflict Procedures under Section 2-11.1(d)

When a TCT board member becomes aware that he or she has a conflict on an item that is to be discussed and/or voted upon at a meeting and they are present for any portion of that meeting, the board member should do the following: 1) announce publicly at the meeting the nature of the conflict before the item is heard; 2) absent themselves from that portion of the meeting during which the item is *discussed and/or voted upon*¹⁷; and 3) file a written disclosure of the nature of the conflict with the board clerk or whoever may be charged with recording the minutes of the meeting within 15 days after the vote. *See Memorandum re Voting Conflict Procedures*, Miami-Dade County Ethics Commission, January 16, 2013¹⁸; *But see* Article VI, Section 1, Conflict of Interest, TCT Bylaws¹⁹

¹⁶ The Board chair or presiding officer of a Board meeting may present resolutions for the same initiative or similar items that may be grouped in a manner that allows them to be voted on as a consent agenda, in a manner that enables the Board to act on the group of resolutions with one vote and not have each resolution read and voted on separately. **Any board member shall be entitled to request an item to be bifurcated. In such event, the item shall be pulled from the consent agenda and discussed as a separate resolution.** *See* Article IV, Section 3, TCT Bylaws

¹⁷ To “absent oneself” means to go or stay away from something, i.e., he *absented himself* from the meeting. <https://www.merriam-webster.com/dictionary>

¹⁸ “[L]ocal officials who absent themselves from a portion of a meeting to avoid being present during a conflict item, must still state publicly prior to the vote the nature of the conflict as well as make the required written disclosure within 15 days after the vote to be in compliance with Section 112.3143(3). *Memorandum re Voting Conflict Procedures*, Miami-Dade County Ethics Commission, January 16, 2013; *See also* INQ 15-113 (concluding that a board member of TCT employed or member of an agency receiving funding from TCT must disclose the conflict publicly, file a written disclosure and abstain from speaking on the issue)

¹⁹ A Board member, prior to voting on a funding issue that involves any program or agency in which he or she participates as an employee or member of the governing authority, shall disclose his or her interest in said program or agency and file a disclosure statement with the Clerk of the Board. If a member of the Board has declared a conflict of interest, the member shall abstain from speaking or voting on such issue. However, the member does not need to leave the room during the discussion.

Opinion

While board members have a duty to vote, they are also bound by State and local ethical standards regarding conflicts of interest.²⁰ In Miami-Dade County, all public officials, officers, and employees must abide by the County Ethics Code found in Section 2-11.1. The voting conflict provision at Section 2-11.1(d) was enacted to foster transparency and public confidence.

Once a voting conflict has been determined, the conflict does not disappear because the item is in the Consent Agenda section of a meeting; rather, the conflict remains throughout and applies in any circumstance where the member is required to take official action. The prohibition applies to both, *participation and vote*.

When the Consent Agenda is addressed at a meeting, members should be asked whether they have read it, fully understand each item in it or have any conflicts with respect to any item. Conflicts should be disclosed, and any item where a member has a conflict should be moved to the ordinary Agenda. If even one member hasn't read and fully understood the Consent Agenda, the items on the consent agenda should be placed on the regular agenda and brought up individually. Otherwise, there is no informed consent. These rules should be placed in the board's bylaws and carefully followed.²¹

In an ideal situation, a board member with a voting conflict would announce the conflict and refrain from participation in any way and subsequent vote on the affected item. However, in a Consent Agenda situation, while the board member with a voting conflict may avoid participation, he or she is also unable to vote on the Consent Agenda even though he or she has no conflict on the remaining Resolutions included in the vote. This could yield inequitable results, precluding a board member from exercising his or her duties to the board because his or her affected Resolution is part of the Consent Agenda.

While a board member's voting conflict may be specific to a single affected Resolution/item in the Consent Agenda, the affected Resolution is necessarily commingled with the remaining Resolutions, making it difficult, if not impossible to allow the board member to participate in a blanket discussion of any of these items and the consequential single vote. Pointedly, participation (i.e., discussion) of the Consent Agenda may occur on any given Resolution presented *irrespective of the order in which it was introduced by Staff*, complicating recusal measures undertaken by a conflicted board member. Consequently, in a Consent Agenda single vote situation, a conflicted board member would have to recuse himself or herself from all participation to avoid the possibility that his or her comment may be attributed to or perceived as advocacy of his or her affected item.

²⁰ Section 286.012, Fla. Stat. provides that a public official/officer [board member] who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act unless, with respect to any such member, there is, or appears to be, a possible conflict of interest.

²¹ See <https://www.cityethics.org/content/misuse-consentagendas#>

Hence, while it may contradict the desired effect of the meeting, in light of the manner in which the Consent Agenda is addressed by the board (Staff presentation of all Resolutions followed by discussion of any of the subject items in any order), it is recommended that a board member with a voting conflict of interest on a Consent Agenda Resolution who could otherwise vote and/or participate in the remaining Consent Agenda Resolutions, “pull” the affected Resolution,²² to be considered as a Non-Consent Agenda item, prior to voting and/or participating (in the discussion) on the remaining Resolutions in order to avoid a voting conflict or appearance of impropriety situation.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only.²³ For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>

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 Commission on Ethics 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.

²² The affected item may be “pulled” prior to or after the Staff presentation but before discussion of the Resolutions is initiated.

²³ This opinion does not address limitations on voting conflict procedures in Non-Consent Agenda items/resolutions or participation in general “brainstorming” workshops of the Board.