

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

COMMISSIONERS

Dr. Judith Bernier, CHAIR
Wifredo “Willy” Gort, VICE CHAIR
Nelson C. Bellido Esq.
Dava J. Tunis, Esq.
Lourdes B. Fernandez, Esq.



EXECUTIVE STAFF

Jose J. Arrojo
EXECUTIVE DIRECTOR

Radia Turay
ADVOCATE

Loressa Felix
GENERAL COUNSEL

January 25, 2024

Via Electronic Mail Only:
rsuarezrivas@hialeahfl.gov
Btg18515@hialeahfl.gov

Rafael Suarez-Rivas, Esq.
City Attorney

Barbara T. Govea, Esq.
Deputy City Attorney

City of Hialeah
501 Palm Avenue, 4th Floor- Law Dept.
Hialeah, Florida

Re: INQ 2024-15, Hialeah Affordable Housing Task Force
Section 2-11.1(b)(4), Miami-Dade Code

Dear Mr. Suarez-Rivas and Ms. Govea:

Thank you for conferring with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance, as requested by the Hialeah City Council, regarding the application of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance, Section 2-11.1, Miami-Dade Code, (“County Ethics Code”) to members of the Hialeah Affordable Housing Task Force.

Issue:

Whether members of the Hialeah Affordable Housing Task Force are “advisory personnel” as defined in Section 2-11.1(b)(4) of the County Ethics Code.

Facts:

In November 2023, the Hialeah City Council by resolution established the Hialeah Affordable Housing Task Force. For purposes of this opinion, the relevant portions of the establishing resolution relate to the task force’s charge and term.

Section 2., relating to the task force’s charge from the city council, provides, in relevant part, as follows:

[The Affordable Housing Task Force] will provide comprehensive research and planning that will address the challenges and opportunities related to affordable housing with the City and report their findings, date, and recommendations to the Mayor with copies of such to be delivered and made available to all members of the City Council.

Section 4. Term, relating to the time afforded the task force to complete its charge, provides as follows:

The task force shall commence once members are ratified by the City Council, which task force shall sunset one (1) year after that date or when their written recommendation are accepted by the City Council, whichever is earlier.

The Hialeah City Attorney has relayed that, consistent with the language of the enabling resolution, the city council’s intent was to establish a purely advisory task force without any greater responsibility that was afforded up to one year’s time to complete its work. ¹

Discussion:

The County Ethics Ordinance constitutes the minimum standard of conduct for municipal advisory personnel. ² Section 2-11.1(b)(4) of the Ethics Code defines advisory personnel as follows:

The term “advisory personnel” shall refer to those members of County [City] advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners [City Council].

In RQO 09-42 the Ethics Commission considered whether the financial disclosure provisions contained in Section 2-11.1(i) of the County Ethics Code applied to all county board members. In that case, the Ethics Commission opined those members of task forces or ad hoc committees that will be sunset in less than one calendar year are not subject to the Ethics Code’s financial disclosure provisions.

Consequently, in subsequent opinions, it was inferred that members of advisory boards, intended by resolution to be in existence for less than a calendar year, are not advisory personnel subject to the restrictions contained in the County Ethics Code.

¹ See Section 2-1074(5), Miami-Dade Code, allowing Ethics Commission to seek informal nonbinding opinion or guidance from the County Attorney or any City Attorney when a request for an advisory opinion has been made.

² See Section 2-11.1(a), Miami-Dade Code.

For example, in INQ 11-63 the Ethics Commission advised the Town of Surfside that there were no prohibitions on the hiring of a Town ad hoc committee member because the committee was due to sunset within six (6) months and consequently its members were not advisory personnel covered by the County Ethics Code.

Similarly, in INQ 17-292 the Ethics Commission advised county staff that the financial disclosure provisions contained in subsection (i) of the Ethics Code would only apply to those members of Miami-Dade Economic Advocacy Trust boards that operate for a year or longer.

Again, in INQ 18-01 the Ethics Commission considered whether the voting conflict and financial interest restrictions contained in Sections 2-11.1(v) and (n), respectively, applied to the members of the Mayor's Urban Expansion Area Task Force. That task force was primarily charged with making recommendations to the Board of County Commissioners regarding boundary changes to the county urban expansion area. Because the task force was intended to sunset after seven months, county staff was advised that the Ethics Code's voting conflict and financial interest restrictions did not apply to its members.

Finally, and more recently, in INQ 20-75, applying the reasoning underlying those prior ethics opinions regarding the applicability of the County Ethics Code to ad hoc committees, boards, or task forces that are intended to exist for less than one (1) calendar year, the Ethics Commission advised the Miami City Attorney that the Miami 21 Ad Hoc Task Force was not an advisory board as defined in the County Ethics Code. That task force's establishing resolution directed staff to complete its work within one hundred eighty (180) days but because of pandemic related tolling resolutions, its actual term was unclear.

Opinion:

The resolution that establishes the Hialeah Affordable Housing Task Force charges its members with providing affordable housing recommendations to the mayor and city council.

Because the establishing resolution allows the task force to operate for less than one year, the Hialeah Affordable Housing Task Force members are not advisory personnel as defined in the County Ethics Code and thus not bound by the County Ethics Code's provisions.

To be clear, this does not mean that the task force members are left to operate outside of any ethical framework. While this agency is not authorized to interpret or enforce the Code of Ethics for Public Officers and Employees found in Chapter 112 (Part III) of the Florida Statutes (state ethics code), the task force members are surely public officers as defined in that code. Consequently, their conduct will be governed by the state ethics code.³

³ See CEO 20-7 (The members of the [Miami 21] Task Force, once they are appointed, will be public officers, as defined in Section 112.313(1), Florida Statutes. They will occupy offices created by a mechanism of law (a resolution of the City Commission) to perform a function of the City government (reviewing ordinances and proposing government action) in positions that can only be assumed by appointment by the City Commission. See CEO 20-02. Because they will be public

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,



Jose J. Arrojo
Executive Director

cc: 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.

officers, the members of the Task Force will be subject to the prohibitions found at Section 112.313(7)(a), Florida Statutes, among others.)