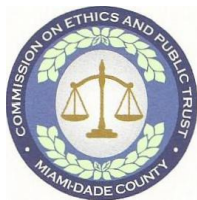


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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October 21, 2024

Sonja K. Dickens  
City Attorney  
City of Miami Gardens  
18605 N.W. 27th Avenue  
Miami Gardens, FL 33056  
Sent via e-mail to: [sdickens@miamigardens-fl.gov](mailto:sdickens@miamigardens-fl.gov)

Re: INQ 2024-161, Section 2-11.1(d), Voting Conflict.

Dear Ms. Dickens:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting, in your capacity as City Attorney, our guidance regarding possible voting conflicts of interest.

### Facts

The City of Miami Gardens was incorporated in 2003 and is the third largest city in Miami-Dade County.<sup>1</sup> The City has a Mayor-Council-Manager form of government, under which the elected City Council sets policy, enacts ordinances, adopts resolutions, and reviews plans for development.<sup>2</sup>

You have advised that Miami Gardens Councilman Reggie Leon, who sits in Seat 2 of the City of Miami Gardens City Council, has recently been appointed to the Board of Trustees of Florida Memorial University (“FMU”). FMU is a private coeducational institution that is the only historically Black college and university (“HBCU”) in South Florida.<sup>3</sup> The Board of Trustees exercises all of FMU’s corporate powers, including approving the University’s annual budget and authorizing and approving the borrowing of any monies.<sup>4</sup> You have advised that Councilman Leon will not receive monetary compensation for his service on FMU’s Board of Trustees.

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<sup>1</sup> *City Profile*, ABOUT THE CITY, <https://www.miamigardens-fl.gov/252/About-the-City> (last visited Oct. 18, 2024).

<sup>2</sup> *Mayor & City Council*, CITY COUNCIL, <https://www.miamigardens-fl.gov/269/City-Council> (last visited Oct. 18, 2024).

<sup>3</sup> *See About our University*, ABOUT FMU, <https://www.fmuniv.edu/about-fmu/> (last visited Oct. 18, 2024).

<sup>4</sup> *See FMU Policy No. 1.0001, Board Policies and Duties*, available at: <https://policies.fmu.edu/wp-content/uploads/2020/12/Board-Powers-and-Duties-2.pdf> (effective Oct. 1, 2020).

You further advised that the City of Miami Gardens and FMU have, in the past, entered into cooperative agreements to pursue various joint initiatives. As examples, you mentioned an agreement involving the provision of college courses to City residents, as well as an agreement concerning practice space for FMU's college athletic teams. You also acknowledged the possibility that the City may choose to provide funding to FMU, and that zoning matters concerning FMU may come before the City Council because FMU is located in the City.

### Issue

Whether a City of Miami Gardens Councilman who serves on the Board of Trustees of a university located in the City has a conflict of interest when voting on matters involving said university.

### Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code"), at Section 2-11.1(d),<sup>5</sup> establishes that a voting conflict exists if:

- 1) a council member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary) with any entity affected by the vote;
- 2) a council member has an enumerated relationship (stockholder, bondholder, debtor, or creditor) with an entity affected and the matter would affect him or her in a manner distinct from how it would affect the public generally; and,
- 3) a council member might, directly or indirectly, profit or be enhanced by the board action.

*See* RQO 15-04 (finding that a Village of Bal Harbour Councilman had a prohibited conflict of interest that prevented him from voting on rezoning issues concerning his employer).

The first category of conflict is an "automatic prohibited voting conflict," which exists when the public official has an enumerated relationship with a party who will be directly or indirectly affected by the action of the elected body on which the official serves. *See* RQO 19-02 (discussing categories of voting conflicts); RQO 15-04. "[I]t is clear that if the voting member holds a[] primary enumerated position with the affected entity, then there is a *per se* or automatic voting conflict and the member may not vote on or participate in the matter before the elected body." RQO 19-04. "Even in the absence of a financial or economic benefit to the . . . official, if such a relationship exists, the official has a prohibited conflict of interest and is barred from voting." INQ 22-93 (citing RQO 15-04). Furthermore, an entity need not be the applicant or requestor before the public board on which the official serves in order to be "affected" as that term is used in the ordinance; rather, an entity can still be affected if it stands to reap a substantial material benefit or detriment from the vote. *See* RQO 15-04.

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<sup>5</sup> Section 2-11.1(d) of the County Ethics Code, by its terms, applies to the County Mayor and members of the Board of County Commissioners ("BCC"). However, the County Ethics Code provides that the County Ethics Code "shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers . . . ." County Ethics Code § 2-11.1(a). It further provides that: "[r]eferences in the section to County personnel shall therefor be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to." *Id.*; *see also* RQO 15-04.

In practice, a Commissioner-elect to the BCC who was also the Executive Director of St. Thomas University's Center for Pandemic, Disaster, and Quarantine Research ("PDQ") could not vote on any item relating to funding for PDQ that came before the BCC because he held an enumerated relationship and therefore had an automatic conflict. *See* INQ 20-123. Similarly, a City Councilman for the City of Miami Gardens who served as the uncompensated Executive Director of the African Museum of Arts and Culture could not vote on any matter concerning the Museum that came before the City Council because he held an enumerated relationship and therefore had an automatic conflict. *See* INQ 15-73. Additionally, a Town Councilman for the Town of Medley who volunteered as a member of the Board of Directors of the Town of Medley Chamber of Commerce could not vote on, or participate in the discussion of, any matters related to the Chamber that came before the Medley Town Council because he had an enumerated relationship with the Chamber and therefore had a "*per se* voting conflict." *See* INQ 13-246.

Here, Councilman Leon has accepted appointment to FMU's Board of Trustees. As such, he holds an enumerated relationship – officer and/or fiduciary – with FMU. *See* County Ethics Code § 2-11.1(d); RQO 19-02; RQO 15-04; INQ 13-246. As such, Councilman Leon must recuse himself from any matter that comes before the City Council that will affect, directly or indirectly, FMU. *See* RQO 19-04; RQO 19-02; RQO 15-04; INQ 20-123; INQ 15-73; INQ 13-246. Practically speaking, this means that he must recuse himself from any matter that comes before the City Council related to funding that will benefit FMU. *See* INQ 20-123. He must also recuse himself from recurring matters, such as the renewal or modification of any joint initiative or cooperation agreement between the City and FMU that may come before the City Council, including those related to the provision of practice space for FMU athletic teams. *See* INQ 20-123; INQ 15-73; INQ 13-246. Additionally, Councilman Leon must recuse himself from any zoning or other approvals where FMU is an applicant or where FMU stands to reap a substantial material benefit or detriment from the zoning or other matter. *See* RQO 15-04.

You further asked for clarification regarding two prior informal ethics opinions. First, in INQ 24-49, two members of The Children's Trust ("TCT") Board who had enumerated relationships with the Healthy Start Coalition Board ("HSCMD") – as Treasurer and Board Member respectively – had automatic conflicts of interest and had to refrain from voting on a matter before the TCT that provided funding for HSCMD. *See* INQ 24-49. By contrast, two TCT Board Members who worked for the United Way of Miami-Dade ("United Way") and the Florida Department of Health did not have automatic voting conflicts because neither the United Way nor the Florida Department of Health received funding under the proposed resolution. *See id.* As such, this opinion is in accord with our guidance on prospective FMU-related items that come before Councilman Leon. When a voting member has an enumerated relationship (such as Board Member) with an entity that will be directly or indirectly affected by the matter before the body on which the voting member serves, the voting member has a conflict and must recuse him or herself from the matter. *See id.*

Second, in INQ 22-01, two TCT Board Members who served as a Senior Vice President of the Early Learning Coalition of Miami-Dade/Monroe ("ELC") and a Senior Vice President for the United Way had enumerated relationships with said entities and therefore had automatic conflicts of interest that prevented them from voting or otherwise participating in discussion regarding a TCT resolution to provide funding to both the ELC and the United Way. *See* INQ 22-01. By

contrast, a third TCT Board Member who worked as Executive Vice President and Provost for Miami-Dade College (“MDC”) did not have a prohibited conflict of interest because MDC was not an affected entity, would not receive any direct funding from the resolution, and would only possibly receive indirect funding if an educator receiving a scholarship funded by the TCT resolution chose to take classes at MDC. *See id.* Thus, this opinion does not support the proposition that a TCT Board Member who was also an employee of MDC could vote on a TCT resolution that benefited MDC; rather, the TCT resolution funded a general scholarship program and any potential benefit to MDC was speculative and contingent on decisions made by the then-unknown scholarship recipients, which meant that MDC was not “affected” by the TCT resolution. *See id.* As applied to matters before Councilman Leon, where the effect on FMU is attenuated, unclear, or speculative, like the scenario in INQ 22-01, we encourage Councilman Leon to seek further guidance to ensure that there is no conflict of interest.

### Opinion

City of Miami Gardens Councilman Reggie Leon must recuse himself from any matter before the Miami Gardens City Council that will directly or indirectly affect Florida Memorial University because he has an enumerated relationship – officer and/or fiduciary – with Florida Memorial University due to his service as a member of its Board of Trustees. In order to properly recuse himself, Councilman Leon must: 1) publicly announce at the meeting the existence and nature of the voting conflict, 2) absent himself from the City Council chambers during the portion of the meeting when the matter is considered, and 3) file a written disclosure<sup>6</sup> of the conflict and its nature with the City Clerk’s Office within fifteen days of the vote. *See* County Ethics Code § 2-11.1(d).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply under state law. 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/>.

Sincerely,



Nolen Andrew “Drew” Bunker, Esq.  
Staff Attorney

CC: All COE Legal Staff; Councilman Reggie Leon, City of Miami Gardens, sent via e-mail to: [rleon@miamigardens-fl.gov](mailto:rleon@miamigardens-fl.gov).

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<sup>6</sup> “The filing of the State of Florida form prescribed for written disclosure of a voting conflict shall constitute compliance . . . .” County Ethics Code § 2-11.1(d).

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.