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Via Electronic Mail Only:

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Xavier E. Alban, Esq.
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Miami Riverside Center
444 Southwest Second Avenue
Miami, Florida 33130

Re: INQ 2024-17, Commissioner Christine King
Section 2-11.1 (d), Miami-Dade Code, Voting Conflict

Dear Mr. Alban:

Thank you for conferring with the Miami-Dade Commission on Ethics and Public Trust and for seeking guidance, on behalf of Commissioner Christine King, regarding the application of the County Ethics Code, Section 2-11.1, Miami-Dade Code, to the transactions described below.

Background:

In March 2022, Commissioner King, through the Miami City Attorney’s Office, sought guidance regarding the application of the voting conflict provision contained in Section 2-11.1(d), Miami-Dade Code, to her sponsorship and vote on measures to award municipal grants to the Martin Luther King Economic Development Corporation (“MLK EDC”).

In INQ 2022-49, she was advised that the voting conflict provision did not prohibit her consideration and vote on grant funding, space rental, or space lease measures relating to her then recent and former employer, the MLK EDC. In November 2021, upon her election to municipal office, she resigned her position as Executive Director of the MLK EDC.

However, in abundance of caution, because of the then recency of her employment with MLK EDC and because of her family members’ relationship with the entity, her nephew is a voluntary director, and her sibling owns a landscaping company that has a contract with MLK EDC, she was

urged to consider whether sponsoring and voting on these measures might create an appearance of impropriety.

Recently, in part since the Board of County Commissioners has expanded the definition of “immediate family” as contained in the County Ethics Code to include siblings, she has sought additional guidance.

Facts:

Christine King is the City of Miami Commissioner for District 5, and she also serves as the Chair of the City of Miami Commission.

The Martin Luther King Economic Development Corporation is a Florida not-for-profit corporation and a 501(c)(3) organization, with an IRS ruling year of 1983. MLK EDC is involved in the revitalization of commercial and residential areas within a specific target zone in the City of Miami. It solicits donations and grants to carry out its mission.

Prior to her election, Ms. King was employed as the Executive Director for MLK EDC. In November 2021, over two years ago, she resigned her position upon winning her seat on the City of Miami Commission.

Ms. King’s nephew sits on the board of MLK EDC as a voluntary, uncompensated director. Ms. King’s brother is a contracted service provider with MLK EDC.

Issue:

Whether a municipal official may consider and vote on matters affecting a nonprofit that her nephew serves as a volunteer director and with whom her sibling has a contractor relationship.

Discussion:

The County Ethics Code is applicable to County and municipal elected and appointed officials, employees, board members and their immediate family members (“covered persons”). These categories of covered persons are enumerated in Section 2-11.1 (b) of the County Ethics Code. Commissioner King is a covered person pursuant to Section 2-11.1 (b)(1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.¹

Consequently, the voting conflict provision applies to Ms. King’s consideration and vote on matters before her board. The specific text of the county voting conflict provision establishes three distinct scenarios that may give rise to a voting conflict, influenced in part by a financial or employment relationship with the party that may be impacted by the vote.²

¹ The Ethics Code constitutes the minimum standard of ethical conduct and behavior for all municipal officials and officers. *See* Section 2-11.1(2), Miami-Dade Code.

That section provides, in relevant part, that a local elected official may not:

[Vote] on or participate in any way in any matter presented...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...(i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or

[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] (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.

...or who would or might, directly or indirectly, profit or be enhanced by the action of the Board...

As such, officials may be prohibited from voting on a measure if they have a first tier enumerated relationship with a party who might be directly or indirectly affected by any action of the board.³ If such a relationship exists, an “automatic conflict of interest” arises.

Officials may also be prohibited from voting if they have a second tier enumerated relationship with a party who might be directly or indirectly affected by any action of the board and the official would be affected in a unique or distinct manner as compared to the general public.⁴ If such a relationship exists, and the official would be uniquely affected, then a “contingent voting conflict” arises.

Finally, officials may be prohibited from voting if they would or might, directly or indirectly, profit or be enhanced by the action of board. If so, then a “broad voting conflict” exists.

The County Ethics code also applies to immediate family members. Section 2-11.1(b)(9) of the Ethics Code defines “immediate family” as including spouses, domestic partners, parents and stepparents, children, stepchildren, and siblings. The addition of siblings to the definition of family members is recent.

² INQ 15-04 (As allowed by state law, the Board of County Commissioners has established a more stringent standard of conduct as regards the local voting conflict provision than exists under state law. The county voting conflict law specifically provides that a voting conflict may exist when an official “might, directly or indirectly profit or be enhanced” by a vote. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such and effect.)

³ The first tier enumerated relationships are officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary.

⁴ The second tier enumerated relationships are stockholder, bondholder, debtor, or creditor.

Prior opinions applying the broad voting conflict provision to agenda items affecting entities that employ an official's immediate family member have focused on whether the family member is "uniquely impacted" and the resulting possible enhancement, direct or indirect, on the voting official.

In INQ 13-92, the Ethics Commission opined that an official should not vote or participate (including attendance at a workshop) in the consideration of alternative code enforcement system because the official's spouse was the municipal code compliance director. Therefore, the reorganization of the code compliance department, including the use of special masters, could uniquely impact the spouse's job duties, work performance measurements, and salary and thus the elected official would or might directly or indirectly be enhanced by the vote.

In INQ 18-251, the Commission similarly opined that an elected official should not vote or participate on the selection of a city manager because the official's spouse was employed by the city as an at-will department director and most if not all of her employment terms could be impacted by the newly selected city manager. Thus, the elected official would or might directly or indirectly be enhanced by the vote.

In INQ 19-01, the Commission conversely opined that an elected official could vote on the resolution of a bargaining impasse between IAFF Local 1102, a collective bargaining agent that represented several hundred rank and file employees of the city's fire department. Even though the official's son was employed as a firefighter, the item would not confer a special or unique benefit on the firefighter son. Consequently, there was no likelihood that the elected official would be personally or professionally enhanced by the item under consideration.

Very recently, in INQ 2023-159, the Ethics Commission advised an elected official that he could vote on matters relating to county vendors or contractors with whom his spouse's company is transacting business. More specifically, the official was advised that the voting conflict provision would not impose a blanket prohibition on the consideration and vote on matters affecting a municipal vendor with whom his immediate family member was contracting.

However, if the official's family member was engaged with the county contractor or vendor on the matter under consideration by the board, or if the business relationship between the vendor and the family member was significant, then a voting conflict might arise.

Opinion:

Based on the facts presented and the reasoning underlying the ethics opinions cited above, the County Ethics Code permits Commissioner King to sponsor, participate, and vote on funding items affecting the MLK EDC because she does not have an enumerated relationship with that entity. Moreover, it does not appear, again based on the facts provided, that her brother's relationship as a contractor with MLK EDC is sufficiently unique such that she would or might directly or indirectly be enhanced by such a vote.

If future matters before the city commission regarding MLK EDC have a more direct connection with Ms. King's brother's business relationship with that entity, for example if the sibling is a

subcontractor on a contract that the EDC enters into with the city, or if a deeper financial analysis reveals that the sibling's company is almost exclusively dependent on funding from MLK EDC, then she is encouraged to seek further guidance.

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.