

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 30, 2024

Via email only:

Barbie.Hernandez@cityofdoral.com

Ms. Barbie Hernandez, City Manager
City of Doral
8401 Northwest 53rd Terrace
Doral, Florida 33166

Re: INQ 2024-19, Use of Official Position, Section 2-11.1(g), Miami-Dade Code

Dear Ms. Hernandez:

Thank you for consulting with the Miami-Dade County Commission on Ethics and Public Trust and seeking guidance regarding the application of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1, Miami-Dade Code (County Ethics Code).

Facts:

Barbie Hernandez is the City Manager for the City of Doral. Her spouse, Danny Espino, is the District 5 School Board Member for Miami-Dade County Public Schools (MDCPS). He was previously appointed by the Governor to that position to fill a vacant seat. District 5 includes schools located in the cities of Miami, Miami Springs, Doral, Sweetwater, and unincorporated Miami-Dade County.

From time to time, because of this jurisdictional overlap, the Doral City Manager may be called upon to exercise his or her official duties on matters that may affect MDCPS, or more specifically, the District 5 School Board Member.

For example, Doral staff may be involved in preparing agenda item reports for the Doral City Council relating to MDCPS programs and the City Manager may be called upon to negotiate or execute contracts on behalf of the City of Doral with MDCPS. In the past, these matters have included contracting for the use of Doral facilities to house the District 5 School Board Member's office, or the production, at Doral expense, of public service announcements or "season's

greetings” communications from the District 5 School Board Member to his or her constituents in the City of Doral. ¹

Because the City Manager’s immediate family member, her spouse, is the District 5 School Board Member, his term expires in November 2024 and he may seek election to the school board seat, she seeks guidance regarding the application of the Miami-Dade County and Doral Ethics Codes to her prospective official actions as the Doral City Manager on matters affecting MDCPS generally, and her spouse, the District 5 School Board member, specifically. ²

Issue:

Whether a city manager should be involved in her official capacity on matters affecting public schools generally, or her spouse in his official capacity specifically, while the latter serves as a member of the public-school board.

Discussion:

As a preliminary matter, the County Ethics Code (Section 2-11.1, Miami-Dade Code) is applicable to County and municipal elected and appointed officials, charter officers, employees and board members. (“covered persons”). These categories of covered persons are enumerated in Section 2-11.1 (b) of the County Ethics Code. Barbie Hernandez is a covered person pursuant to Section 2-11.1 (b)(5) of the Ethics Code that applies to city managers and department heads. ³

The County Ethics code also applies to immediate family members of covered persons. Section 2-11.1(b)(9) of the Ethics Code defines “immediate family” as spouses, domestic partners, parents and stepparents, children, stepchildren, and siblings. In several provisions, the County Ethics Code treats immediate family members in the same manner as covered persons.

The Ethics Commission has repeatedly opined on the application of the County Ethics Code’s various provisions to interactions between local government officials and employees in their official capacities and their immediate family members. These opinions have focused on the application of those Ethics Code provisions relating to voting conflicts and exploitation of official positions. Irrespective of which of these sections was specifically implicated, the conflict-of-

¹ To be clear, any contracts would be between the City of Doral and MDCPS, a non-commercial governmental entity, not with the City Manager’s spouse in his individual capacity. *See generally* Section 2-386, Doral Code (Prohibiting the award of service contracts, signing contracts, tasks or delivery orders, or blanket purchase agreements, with immediate family members of charter officials and employees.)

² The Ethics Commission may only provide ethics opinions regarding the requesting party’s prospective actions. Section 2-1-074(y), Miami-Dade Code.

³ The Ethics Code constitutes the minimum standard of ethical conduct and behavior for all municipal officials and officers. Section 2-11.1(a), Miami-Dade Code.

interest analysis has focused on whether the proposed interaction would or might result in a unique or special benefit, primarily financial, to the immediate family member.

Also, oftentimes, the recommended remedial guardrails to prevent abuse of official position in these scenarios have included separating the elected official or employee from the transaction involving the immediate family member.

For example, in applying Section 2-11.1(d) (voting conflict provision) to cases considering whether a municipal or county elected official could participate and vote on agenda items affecting entities that employ the official's immediate family member, the analysis has 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, on an item considering an 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 measures, 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 Ethics 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.

In other cases applying Section 2-11.1(g) (exploitation of official position) to actions by local government officials and management employees involving immediate family members seeking employment or promotion by the local government agency, the conflict-of-interest analysis has

focused on ensuring that objective factors drive the recruitment, hire or advancement and that officials, as remedial measures, remove themselves from exercising any role so as to prevent an appearance of favoritism or impropriety.

Thus, for example, this section has been interpreted to mean that municipal councilmembers must avoid any action hiring, promoting, or advocating for the advancement of an immediate family member.⁴

In INQ 18-48, the Ethics Commission opined that no conflict of interest arose when the Village Manager of North Bay Village sought to hire a distant relation as Assistant Village Manager so long as the hiring was based on objective factors and not the familial connection.

In INQ 06-67, the Ethics Commission opined that in practice, the City of Miami Police Department could hire the daughter of one of their Assistant Chiefs so long as the Assistant Chief took no affirmative action to hire, promote, or advocate for the advancement of his daughter.

Similarly, in RQO 99-24, the Commission opined that the County General Services Administration could hire the nephew of another County employee working in the same division so long as the County employee did not have any role in the recruitment process and did not exercise any supervisory authority over his nephew once the nephew was hired.

Finally, cautionary guidance regarding appearance of impropriety was provided in INQ 22-89, in which the Ethics Commission advised that close family members should not work on the same project or be called to “directly or indirectly evaluate or supervise the other’s work,” because even the suggestion that a close family member could have exercised authority to afford special treatment or attention to another family member could create an appearance of impropriety that should be avoided.⁵

Opinion:

Applying the sound reasoning supporting these decisions to the facts presented herein, it does not appear that the County Ethics Code would prevent the Doral City Manager from being involved in matters concerning Miami-Dade County Public Schools as long as these did not involve her spouse, the District 5 School Board Member, or otherwise impact him in a manner that is unique or dissimilar from how other MDCPS officials are affected.

⁴ See INQ 22-89, *citing* RQO 99-24.

⁵ Removing oneself from any official matter involving an immediate family member would also address and remedy any issues that may arise from the application of Section 2-385, Doral City Code, dealing with improper influence by immediate family members and providing that the immediate family members of charter officials and employees are hereby prohibited from directly or indirectly influencing, or attempting to influence, the decision and/or official act of any city staff which would bring pecuniary and/or other direct personal benefit.

If the transaction is going to affect the City Manager's spouse more specifically and uniquely, then it would be advisable for her to utilize remedial measures to remove herself from those transactions, if for no other reason than to avoid the appearance of impropriety.

Consequently, in matters relating to renting of office space for her spouse's district office, the provision of public service messaging or advertising at municipal expense, or the assignment of Doral employees to support her spouse's official functions as the School Board's District 5 member, then it would be prudent for her to abstain from involvement.

While there is no specific technique, frequently, government managers have removed themselves from transactions involving family members, designated another manager to perform those duties, and importantly, identified someone else for the designee to report to on the matter. An affirmative memorandum of public record detailing the abstention or conflict-of-interest remedial plan is also recommended.

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: Loressa Felix, COE General Counsel
Valerie Vicente, Doral City Attorney
All COE Legal Staff

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.