



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Todd Crawl, Director
Florida International University Institute of Environment

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-89; Section 2-11.1 (c) and (d) Prohibitions on transacting business with the County; (m)(2) Certain appearances and payment prohibited; (v) Voting conflicts;

DATE: May 16, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest related to your service on the Biscayne Bay Watershed Management Advisory Board and a pending interlocal agreement between your employer and Miami-Dade County to monitor Biscayne Bay water quality.

Facts

The Biscayne Bay Watershed Management Advisory Board (“BBWMAB”) was created by the Board of County Commissioners in 2021 to advise the Board and the Mayor on measures that will improve the health of Biscayne Bay. *See* Section 2-2440, Miami-Dade Code of Ordinances. While the primary task of the BBWMAB is to propose a detailed Watershed Restoration Plan, the Board was also given several other specific tasks, two of which are relevant here: recommending water quality monitoring and targets and recommending specific water quality projects for funding. *See* Section 2-2444(d) and (f), Miami-Dade Code of Ordinances.

The Board is staffed by employees of the Miami-Dade County Department of Regulatory and Economic Resources (“RER”), and specifically by the County’s Chief Bay Officer.

The Board’s enabling ordinance specified that Board members will include one member “from the Florida International University Institute of Environment.” *See* Section 2-2441(a)(i)4, Miami-Dade Code of Ordinances.¹

You are the Director of the Institute of Environment (“Institute”) at Florida International University (“FIU”). The Institute is a research program that works to provide “sustainable, data-driven solutions” to a myriad of environmental problems, locally and around the world.² Several of the Institute’s scientists are involved in water quality monitoring projects and the identification of the sources of water pollution. Additionally, the Institute’s scientists have previously conducted research in and around Biscayne Bay.

An interlocal agreement between Miami-Dade County and FIU that is in the process of being finalized by RER provides that Miami-Dade County will pay FIU as much as \$6,575,000 over four years to conduct a variety of services and research related to Biscayne Bay, including water quality monitoring, ecosystem assessment and data management. *See* Mayor’s Draft Memo to the Board of County Commissioners “Regarding Ratifying the Action of the county Mayor or County Mayor’s Designee in Executing and Approving and Interlocal Agreement between Florida International University and Miami-Dade County,” as yet undated. Most of the funding for this project will come from grants from the State of Florida.

You have stated that some of these services will be provided by the Institute’s Center for Aquatic Chemistry and Ecotoxicology Recharge Center (“Center”), which, among other resources, has sophisticated laboratories for conducting water analysis. You have stated that the Center’s services are provided at cost to the County under this interlocal agreement and that although the Center is located within the Institute, the Center does not fund the Institute. The interlocal agreement also calls for FIU faculty, staff and students to work on the research, including people you supervise.

Finally, you have advised that your personal salary at FIU is primarily funded by the State of Florida, though approximately one percent is derived from grants.

Issue

Whether any prohibited conflict of interest may exist between your service on the BBWMAB and the proposed contract between the Institute you run at FIU and Miami-Dade County.

¹ The enabling ordinance also specifies that the board include four representatives of municipalities, appointed by the Miami-Dade League of Cities. Currently, elected municipal officials are serving in those roles. While the County Code does not prohibit elected officials from serving on advisory boards, it does mandate the automatic resignation of any board member who qualifies for election. *See* Section 2-11.38(e)(iii), Miami-Dade Code of Ordinances. *See also* INQ 16-206.

² Information about the Institute was taken from its website: <https://environment.fiu.edu/index.html> (accessed on May 2, 2024).

Analysis

A. Section 2-11.1(c) and (d) – Prohibition on transacting business within the County

The County Ethics Code at Section 2-11.1(c)(3) prohibits advisory board members from transacting business “individually or through a firm, corporation, partnership or business entity” with the County department or agency that is “subject to the regulation, oversight, management, *policy-setting* or quasi-judicial authority of the board of which the person is a member.” Section 2-11.1(c)(3), County Ethics Code, (emphasis added). *See also* INQ 19-78 (finding that a member of a Community Redevelopment Agency could not apply for funding from the agency); INQ 15-192 (finding that a member of the governing board of Sylvester Comprehensive Cancer Center (“Sylvester”) could not serve on the board of the Public Health Trust (“PHT”) because Sylvester had a multi-million dollar contract with the PHT).

Sections 2-11.1(c)(4) and (c)(7) of the County Ethics Code set out how the Board of County Commissioners (“BCC”) may waive this prohibition if, by a vote of two-thirds of the entire board, the BCC finds that certain conditions are met. One of the potential conditions that would allow for a waiver is a finding that the “property or services to be involved in the proposed transaction are unique and the County cannot avail itself of such property or services” from another source. Section 2-11.1(c)(7)(3). Alternatively, the BCC may make a finding, by a two-thirds vote, that the proposed transaction “will be to the best interest of the County. *See* Section 2-11.1(c)(7)(5). County Ethics Code. *See also* Resolution No. R-1033-23, passed on November 7, 2023, by which the BCC extended a similar waiver to an employee who was otherwise prohibited from contracting with the department that employed her.

Here, the Institute’s contract with RER to work on Biscayne Bay water monitoring would be prohibited by Section 2-11.1(c)(3) so long as you serve on the BBWMAB because the board advises RER on policies regarding Biscayne Bay and is specifically tasked with recommending water quality monitoring and funding strategies for water quality projects. You could request a waiver of your conflict, using the procedure set out in Sections 2-11.1(c)(4) and (c)(7).

However, other provisions in the County Ethics Code must also be considered.

B. Section 2-11.1 (m)(2) – Certain appearances and payment prohibited

The County Ethics Code establishes that members of advisory boards, quasi-judicial boards and semi-autonomous boards cannot:

[A]pppear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party.

See Section 2-11.1(m)(2), County Ethics Code. These prohibitions bar not only you from appearing before the board or agency on which you sit, but also extend to your associates. *See* INQ 17-76; INQ 14-286; INQ 03-76.

In practice, this has meant that an attorney who sat on a quasi-judicial board that was staffed by RER could not represent a client making an application to RER, even though that application would not likely come before the quasi-judicial board on which the attorney served because of the potential conflicting overlap. *See* INQ 14-286. Similarly, a business owner whose business had received a grant from a Community Redevelopment Agency (“CRA”) could not serve as a board member on that CRA because he would have an ongoing conflict under Section 2-11.1(m)(2). *See* INQ 23-149. *Compare* with RQO 18-03 (finding that a developer who contracted with a County department to develop affordable housing could also sit on the Affordable Housing Advisory Board and the Affordable Housing Trust Fund Board of Trustees, because neither board set policy for or oversaw the County department the board member was contracting with).

It is worth adding that two other members of the BBWMAB have requested and received legal opinions from the Miami-Dade Ethics Commission regarding potential conflicts of interest. *See* INQ 21-127 and INQ 21-121. In INQ 21-127, the Ethics Commission considered the proposed board member fulfilling the enabling ordinance requirement that one of the members be recommended by The Nature Conservancy. *See* Section 2-2441(a)(i)13, Miami-Dade Code. The member serving in that role is also employed by The Nature Conservancy, working on a County-funded project to buy Environmentally Endangered Lands. The board member’s work on the County project was approved before the BBWMAB was created and is not something the BBWMAB would be called upon to consider. The Ethics Commission found that he was not barred from serving on the BBWMAB under Section 2-11.1(m)(2) because there were no facts provided to the Ethics Commission indicating The Nature Conservancy would ever appear before the BBWMAB. *See* INQ 21-127. If the Nature Conservancy were to contract with the County to provide services related to Biscayne Bay and the mission of the BBWMAB, that would likely pose a conflict, however.

In INQ 21-121, the Ethics Commission considered the board member who would fulfill the enabling ordinance requirement that one of the members be a coastal engineer working in Miami-Dade County and recommended by the Florida Engineering Society (“FES”). *See* Section 2-2421(a)(i)8, Miami-Dade Code. A representative of FES requested the opinion because he stated any qualified candidate would likely be a Miami-Dade County vendor. The FES representative did not provide the Ethics Commission with a specific candidate or any information about a specific vendor’s contract with Miami-Dade County. The Ethics Commission found that there was no prohibited conflict of interest that would automatically preclude a County vendor from serving on an advisory board, but also listed all of the potential conflicts of interest, including under Section 2-11.1(m)(2), that could occur if the board member, or his or her employer, had a County contract that involved the BBWMAB or the department for which it set policy. *See* INQ 21-121.

Here, the BBWMAB is specifically tasked with recommending water quality monitoring and strategies to fund water quality projects, the very type of project that the Institute seeks to engage in under its proposed contract with RER. Your employment by the Institute as it finalizes this

contract and your service on the BBWMAB together create a non-waivable conflict under Section 2-11.1(m)(2) of the county Ethics Code.

C. Section 2-11.1(v) – Voting Conflicts

The County Ethics Code prohibits advisory board members voting:

on any matter presented to an advisory board . . . on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

County Ethics Code § 2-11.1(v). Accordingly, for a voting conflict to exist under Section 2-11.1(v) of the County Ethics Code, both prongs must be met. *See* RQO 07-49; INQ 20-74; INQ 20-73.

An example of voting conflict under Section 2-11.1(v) arose for a member of the Miami-Dade Land Acquisition Select Committee when the committee was set to vote on whether to recommend the Board of County Commissioners approve the purchase a parcel of land owned by the committee member’s private employer because he had an enumerated relationship *and* the property sale could directly impact his employer’s funding for his position. *See* INQ 20-74. *Compare* with INQ 20-73 (finding that a member of the same Committee did not have a voting conflict because she was a volunteer for the same organization and would receive no benefit from the contract). *See also* RQO 07-42 (finding that a board member of a museum trust created by the County did not have a voting conflict when the board considered renewing a contract with a charitable support organization, which she also served as a volunteer, because she would not receive any financial benefit from the support organization).

Whenever a board member has a prohibited voting conflict, the member is required to publicly announce that he or she has a conflict and the nature of the conflict. *See* Fla. Stat. § 112.3143(3)(a). Furthermore, upon recusal, the board member must file a written disclosure regarding the nature of the conflict with the person responsible for recording the minutes of the meeting within fifteen (15) days after the vote.

Here you would be prohibited from voting on anything related to the Institute, because as an employee of the Institute, you have an enumerated relationship with the agency and the County’s contract with the Institute could directly impact FIU’s funding for your position. Your inability to vote on anything related to the Institute would leave you unable to participate in at least two specific duties required of the BWMAB.

Opinion

Consequently, your continued service on the BBWMAB, while the Institute, your employer, finalizes a contract with RER to conduct the type of work the board is specifically tasked with recommending, constitutes a prohibited but waivable conflict of interest under Section 2-11.1(c) and (d) and a non-waivable conflict of interest under Section 2-11.1(m)(2). Additionally, under

Section 2-11.1(v) you have an ongoing voting conflict on anything related to the Institute that comes before the BBWMAB.

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 based on directives from or 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/>.

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 this is an informal opinion, 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.