



To: Cristina Arias

From: Robert Meyers, Esq.

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Voting Conflicts – Size Of Class

Date: January 27, 2014

You have requested a summary of the state of the law surrounding voting conflicts when matters coming before the governing body could affect property owned by the elected official or property the elected official is contemplating acquiring in the area. As you know, elected officials are required to comply with the voting conflict standards established under state law, as well as adhering to the voting conflict provisions contained in the Miami-Dade County Ethics Code.

In a nutshell, state law prohibits a public officer from voting on a matter if such a vote would result in a special private gain or loss to the official. In 2013, the Florida Legislature amended Florida law to better define the term "special private gain or loss" to mean an economic benefit or harm. Moreover, the Legislature identified several factors to consider when determining whether a special private gain or loss exists. Historically, the Florida Commission on Ethics has looked at the size of the class affected by vote and the degree to which class members are affected. The Florida Commission on Ethics has no threshold per se that automatically creates a voting conflict, but does consider the percentage of ownership interest by the elected official and the number of other owners. The Florida Commission also makes a distinction between property owned by the elected official at the time of the vote versus property that may be acquired by the elected official after government action has been taken. As a general proposition, an elected official who votes on item which will have an impact on property located in the municipality not currently in the possession of the elected official or where no pending contract exists to purchase property in the affected area will not create a voting conflict for the official because any loss or gain to the official is perceived as remote and/or speculative. Insofar as property owned by the official at the time of the vote, the Florida Commission has issued numerous opinions on this subject.

I will highlight a few which appear to offer the best insight into the Commission's approach to this topic. In CEO 85-62, the Commission found that a city council member was not prohibited from voting on an ordinance which would provide site-specific zoning for a redevelopment area, where the council member's corporation owned a one-acre parcel of property within the several square miles included in the redevelopment area. The Commission concluded that the size of the class of persons affected by the rezoning measure would be large enough that any gain that the official must receive would not constitute a "special gain." In a more recent opinion (CEO 13-20), the Commission considered whether the Mayor could vote on matters relating to the de-annexation from the Town's boundaries part of the subdivision where the Mayor resides. Under the circumstances, the Commission found that the number of lots that could be de-annexed from the Town was significant -108 lots - and their de-annexation would affect all of them in a proportionally equal manner such that there was no special private gain or loss to the Mayor as a result. In CEO 05-15, the Florida Ethics Commission opined that a city commissioner whose private legal client is a potential developer of affordable housing within the city is not required to abstain from voting regarding city commission measures to amend the city's affordable housing ordinance. Given the events that would have to occur in order for the client-developer to engage a project, any gain or loss would be "remote and speculative."

Under the local ethics ordinance, voting conflicts are covered in Section 2-II.1(d) and address two situations 1) when an official as a special relationship with a party in front of the board (the relationships are enumerated in the section) and 2) if the elected official stands to uniquely benefit from the vote or action. The "uniquely benefit test" has essentially been interpreted in the same way as the state's size of the class test. The local ethics commission recognizes that action taken by an official where the entire community or a large group of property owners or businesses are or could be affected by the vote does not give rise to a voting conflict. From a procedural standpoint, the local law does require a person with a voting conflict or one who believes he or she has a voting conflict to absent himself/herself from the proceedings.

The above was meant to function as a general discussion of voting conflicts when the elected official is part of a class of individuals or businesses that will be or could be affected by board measures. Since each situation is unique, the specific facts obviously matter and can produce different results. Finally, although state and local law may permit an elected official to vote because such a vote might not violate the letter of law, perceptions of a conflict or an appearance of impropriety may serve as sufficient reasons for the official to declare a voting conflict even if there is no actual or real conflict.

Arias, Cristina

From: Leen, Craig
Sent: Thursday, March 20, 2014 6:21 PM
To: Arias, Cristina
Cc: Thornton, Bridgette; Figueroa, Yaneris
Subject: Opinion Folder
Attachments: Voting Conflicts Opinion.doc

Cristina,

Please place the attached opinion from Robert Meyers in the opinion folder. I think it is very instructive on the topic of voting conflicts. Bridgette and Yaneris, please review it as well.

Craig E. Leen
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City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
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Fax: (305) 460-5264
Email: cleen@coralgables.com

Memo

To: Craig Leen, City Attorney, City of Coral Gables

From: Robert Meyers, Esq.

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