

Palm Beach County Commission on Ethics

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November 4, 2011

Gregory Miklos
Boca Raton Community Appearance Board
2263 N.W. Boca Raton Boulevard, Suite 112
Boca Raton, FL 33431

Re: RQO 11-067
Voting Conflicts

Dear Mr. Miklos,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on October 6, 2011 and again on November 3, 2011, and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED as a member of the Boca Raton Community Appearance Board (CAB), whether a member of your outside business may represent a customer or client of your firm in front of the CAB, so long as you abstain from voting and do not participate in any part of the decision-making process.

IN SUM, as an appointed official you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with *similarly situated members of the general public*, for yourself, your outside business, or a customer or client of your outside business. Voting on a client's proposal, participating in conversations or attempting to influence CAB members would therefore constitute a misuse of office. The prohibition extends to you, or someone using your official position on your behalf. Therefore, the financial misuse and voting conflicts sections of the Code of Ethics do not prohibit a member of your outside business from representing a customer or client provided that you *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and do not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are an architect who serves on the Community Appearance Board (CAB), an advisory board for the City of Boca Raton (the City). The CAB reviews all commercial and multifamily residential projects in the City and all signage (free-standing and on buildings) for aesthetics and code compliance.

Your firm, Miklos and Associates, is based in the City and you are contacted frequently by clients who wish to develop, remodel, or rezone a property they own within the City. As their architect, you meet with the City zoning staff to work out site specifics and other issues. Once the preliminary site, floor and evaluation plans are completed, you present your proposal to the Planning Advisory Board (PAB) for review and discuss the reviewer's comments from related departments such as traffic, fire, utility, zoning or environmental divisions. After these discussions, you make the required revisions to the proposal as needed and then resubmit your plans to the PAB and the City Council. Throughout this

process, you will be the member of your firm representing the client. Prior to final approval, this plan must go before the CAB. At that time you disclose the nature of your conflict- that your firm represents the client's plan subject to the Board's approval, abstain from voting and do not participate in any part of the process, including conversations with staff regarding CAB issues. Subsequent to the abstention, you file a state conflict form as required by statute. In dealing with the CAB and the department within the CAB's authority, another member of your firm presents the project.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-443(a) prohibits you from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *know or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public.* A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.

Section 2-443(c) similarly prohibits you from voting on an issue or participating in a manner that would result in a special financial benefit attributable to yourself, outside business or customer as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting you would violate the misuse of office prohibitions of the code. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the CAB clerk and the Palm Beach County COE. The language of §2-443(c) is as follows:

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public...

In this context, "participate" means that you may not present your clients project to the CAB or take part in any presentation or discussion regarding your client's project with your fellow CAB board members. You are not prohibited from meeting with and presenting to Zoning staff and other related city advisory boards.¹ However, while you may submit and discuss your client's project with staff prior to the matter coming before the CAB, you may not use your official position to influence the process. The misuse of office and voting conflict prohibitions apply to you personally, or someone using your official title or position at your direction. Therefore, you are not prohibited from working with City staff on your client's project up and until it goes before your board, so long as it is in your professional as

¹ Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.

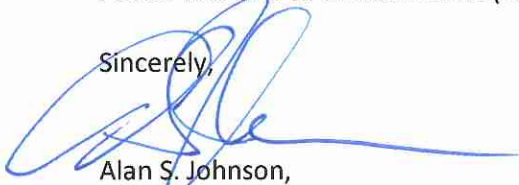
compared to your official capacity. Additionally, this provision does not prohibit other owners or employees of your outside business from representing your client's interest in these matters.

IN SUMMARY, based on the facts and circumstances presented, you may not use your appointed office to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, you must disclose the nature of that conflict, refrain from participating and file the required conflict disclosure form 8b. The Code of Ethics does not prohibit a business associate or other individual from representing your client's interests before the CAB separate and apart from you or your official office.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal