



To: Commissioner Lago

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding 747/760 Ponce Settlement Public Hearing

Date: February 26, 2018

On June 14, 2017, the City Attorney referred a public nuisance to the City Commission sitting as the Nuisance Abatement Board. The public nuisance related to the commercial properties located at 747 and 760 Ponce de Leon Boulevard (Ponce) and their effect on the surrounding residential neighborhood. Subsequently, two settlement conferences were held between the City, the owners of 747 and 760 Ponce and interested residents to find a mutually acceptable solution in order to address the concerns and to fully and finally resolve the pending nuisance abatement matter. In order to allow for an opportunity for all affected residents to be heard, the City Commission will hold a public hearing on February 27th and consider a resolution to adopt the proposed settlement agreement.

The owners of 760 Ponce are represented by Laura Russo, Esq., while 747 Ponce is represented by Daniel Milian, Esq. Mr. Milian is Commissioner Vince Lago's brother-in-law, in that he is married to Commissioner Lago's sister. This opinion addresses whether Commissioner Lago may participate in the public hearing and vote on the resolution regarding the proposed settlement agreement.

Applicable Law and Analysis:

The Miami-Dade County Ethics Code is not applicable to the analysis as it does not include "brother-in-law" in the definition of "immediate family." Similarly, Sec. 112.3143(3)(a), F.S. regarding voting conflicts, is not applicable either as it does not "brother-in-law" in the definition of "relative."

The City of Coral Gables Ethics Code does include "brother-in-law" in its definition of "immediate family." The applicable provision is included below, in pertinent part:

No...commissioner...shall participate in any official action directly or indirectly affecting a business in which that person or any member of the immediate family has a financial interest. A financial interest is defined in this subsection to

include, but not be limited to, any direct or indirect interest in any investment, equity, or debt. Sec. 2-296, City of Coral Gables Code.

The relationship here exists between Commissioner Lago and the attorney for the affected business/property and not between Commissioner Lago and the affected business/property itself. Any benefit or detriment that results from a vote by Commissioner Lago would affect the business/property owner, however, any benefit or detriment that the vote may confer to Mr. Milian, as the attorney for 747 Ponce, is too speculative to constitute a voting conflict for Commissioner Lago. Whether or not Mr. Milian is affected depends on an infinite number of factors and possibilities - the terms of the retainer agreement between the business/property owner, the payment terms established in that agreement, how the business/property owner chooses to proceed should the agreement not be ratified, whether the business/property owner chooses to continue to use Mr. Milian as its counsel should further litigation ensue, etc.

Irrespective of whether an actual voting conflict exists, elected officials should always consider whether a vote on a particular matter creates an appearance issue. In fact, the Miami-Dade Ethics Commission has frequently stated that appearance of impropriety issues should guide the actions of public servants and should be a consideration when determining whether he/she should participate in the action. (See INQ 16-41, INQ 13-61, INQ 13-12, INQ 11-178, INQ 09-113 and RQO 12-15). While State Law is not settled in this area, the Florida Ethics Commission has contemplated scenarios where an elected official would recuse from a matter to avoid an appearance of impropriety. (See CEO 05-8: "Section 112.3143(3), Florida Statutes, is not at issue, as the county commissioner intends to recuse himself from all votes involving either the parent company or its subsidiary to avoid the appearance of impropriety.")

Aside from the voting conflict rules discussed above, in accordance with Sec. 286.012, F.S., when the City Commission sits in a quasi-judicial capacity, any member of the Commission "may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice."

In conclusion, Commissioner Lago does not have a legal voting conflict under the applicable City of Coral Gables Code provision. Commissioner Lago has the discretion, however, to recuse from this matter if he feels that voting on this item creates an appearance of impropriety or determines that he is biased or prejudiced on the issue.

This opinion is issued pursuant to Sections 2-252(e)(1) and (8) of the City Code and Section 2-300 of the City's Ethics Code authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

February 2018

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING 747/760 PONCE SETTLEMENT PUBLIC HEARING

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