



To: Vice Mayor Vince Lago

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

RE: Legal Opinion Regarding BDI Construction Company and Gulliver Academy's Request for an Increase to the Maximum Student Enrollment

Date: August 26, 2019

In 2011, the City Commission adopted Ordinance No. 2011-06 relating to Gulliver Academy ("Gulliver"). Included in that Ordinance was a cap on the number of students permitted to be enrolled in the school. Gulliver has requested to increase the student enrollment number from 1,162 to 1,240 thereby requiring City Commission action.

Vice Mayor Vince Lago¹ is employed by BDI Construction Company ("BDI"), a general contracting, design-build, and construction management company specializing in educational buildings, with approximately 30 employees. Earlier this year, after a competitive solicitation process, Gulliver hired BDI specifically to complete a project titled "Courtyard Beatification." Given that permitting for the project would need to be done by the City, the Vice Mayor requested an opinion regarding that relationship and CAO 2019-010 was issued setting forth specific parameters. The opinion notes that the project did not require any approvals by the City Commission, concluded that the relationship was permissible, and that the Vice Mayor should not present before any City board or meet with City staff regarding the project. According to the Vice Mayor, the Courtyard Beatification project is now complete, and Gulliver does not have an on-going contract with BDI for any other work.

This opinion addresses whether the Vice Mayor is permitted to vote on Gulliver's request to increase student enrollment.

¹ In accordance with Sec. 6 of the City Charter, in the event of the Mayor's absence or disability, the Vice Mayor shall undertake the Mayor's duties. Other than the powers delineated in Sec. 2-28 of the City Code, which applies to the Mayor, and the Vice Mayor in his absence, the Mayor and Vice Mayor have the same powers as a City Commissioner. Thus, any reference in this opinion to "Commissioner" extends to the position of Mayor and Vice Mayor.

Applicable Law and Analysis:

Voting - Quasi-Judicial Matters:

When the City Commission sits in a quasi-judicial capacity, certain procedural safeguards must be adhered to; most importantly, that the hearing affords due process to all parties. As such, it is necessary that the decision-makers be impartial and neutral. Florida Courts have found that a member's refusal to recuse him/herself may subject the entire decision to be quashed on certiorari review.

In fact, Section 286.012, F.S., states in pertinent part, "[i]f the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice."

Should the Vice Mayor feel that he has some bias or prejudice for or against Gulliver, he should recuse himself from voting on the matter. Absent such a feeling, however, the Vice Mayor is free to participate.

Voting - Legislative/Policy Matters:

The Miami-Dade Ethics Ordinance speaks to voting conflicts in the second paragraph of Sec. 2-11.1(d) which states in pertinent part:

No [*Commissioner*] shall vote on or participate in any way in any matter presented to the [City Commission] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the [City Commission]: (i) officer, director, partner, of counsel, consultant, *employee*, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, *if* in any transaction or matter would affect [the Commissioner] in a manner distinct from the manner in which it would affect the public generally. Any [City Commissioner] who has any of the above relationships or who would or might directly or indirectly profit or be enhanced by the action of the [City Commissioners] shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

Given that BDI's contractual relationship with Gulliver has concluded, this section is not implicated as a vote to increase Gulliver's cap has no effect on BDI or the Vice Mayor. Any argument that voting on the increased student cap could lead to the campus having to expand which could, in turn, lead to Gulliver hiring BDI anew, is too remote and speculative² to result in a voting conflict.

² While the "remote and speculative" test is provided for in the context of state law, the Miami-Dade Ethics Commission has used it when interpreting the following portion of section 2-11.1(d): "Any [City Commissioner] who has any of the above relationships or who would or might directly or indirectly profit or be enhanced by the action..."

The corresponding state law provision (Sec. 112.3143, F.S.) relating to voting conflict states, in pertinent part, as follows:

No...municipal...officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

A “special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receive a greater benefit or harm when compared to other members of the class.

Likewise, given that BDI’s contractual relationship with Gulliver has concluded, this section is not implicated as a vote to increase Gulliver’s cap has no effect on BDI or the Vice Mayor.

In conclusion, the fact that Gulliver and BDI, the Vice Mayor’s employer, had a contractual relationship (that is now concluded) does not present a voting conflict for the Vice Mayor as long as he does not feel that he has any potential bias or prejudice in favor or against Gulliver.

In consultation with special counsel, 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.

August 2019

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING BDI CONSTRUCTION COMPANY AND GULLIVER ACADEMY'S REQUEST FOR
AN INCREASE TO THE MAXIMUM STUDENT ENROLLMENT

In 2011, the City Commission adopted Ordinance No. 2011-06 relating to Gulliver Academy ("Gulliver"). Included in that Ordinance was a cap on the number of students permitted to be enrolled in the school. Gulliver has requested to increase the student enrollment number from 1,162 to 1,240 thereby requiring City Commission action.

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3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receive a greater benefit or harm when compared to other members of the class.

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August 2019

From: [Ramos, Miriam](#)
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Cc: [Suarez, Cristina](#)
Subject: BDI-Gulliver student cap opinion
Date: Monday, August 26, 2019 8:16:09 AM
Attachments: [opinion - bdi - gulliver enrollment cap.docx](#)
[image005.png](#)

Enga, please publish.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

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