



To: Mayor Vince Lago

From: Cristina M. Suárez, City Attorney *cms*

RE: Mayor Lago's Ability to Vote Regarding Annexation of the Area Known as High Pines/Ponce Davis

Date: October 9, 2023

As requested by you, this opinion addresses whether you have a voting conflict with respect to action taken by the City Commission regarding annexation of the area known as High Pines/Ponce Davis given that your sibling owns and resides in a single-family residence in the area.

I. Voting Conflicts Under Florida Law

Voting conflicts under Florida's Code of Ethics are addressed in Florida Statutes § 112.3143. As applied to county and municipal officers, it provides as follows:

(3)(a) No county, municipal, or other local public 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 as 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.

"Special private gain or loss" is defined as

an economic benefit or harm that would inure to the officer, his or relative, business associate, or principal, in which case, at least the following factors must be considered whether 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 receives a greater benefit or harm when compared to other members of the class.

Fla. Stat. § 112.3143(1)(d). “Relative” is defined as “father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.”

You have indicated that your “relative,” more specifically, your brother, along with his spouse, owns and resides in a single-family residence within the High Pines/Ponce Davis area that is under consideration for annexation by the City of Coral Gables. While your relative’s property is located within area that would be impacted by annexation (should the process proceed through Miami-Dade County’s review and approval and be subsequently approved by the registered voters in the area), section 112.3143(1)(d) requires an examination as to the “size of the class” and the degree to which the interests of all members of the class are affected by the vote in determining whether a matter inures to the public officer’s (or in this case, the public officer’s relative’s) “special private gain or loss.”

The State of Florida Commission on Ethics has explained that “[w]here the class of persons is large, we have concluded that ‘special’ gain will result only if there are circumstances unique to the officer under which he or she stands to gain more than the other members of the class. Where the class of persons benefiting from the measure is extremely small, we have concluded that the possibility of ‘special gain’ is much more likely.” State of Florida CEO 18-14 (citing CEO 01-08). In CEO 18-14, the Florida Commission on Ethics found that proposed amendments to a city’s land development code would not inure to the “special private gain or loss” of a city council member or her relative where the council member and her husband owned six lots comprising 0.65 acres located in the zoning district which contained 690 total lots and 134 total acres of developable land. The official’s ownership interest represented less than one percent of the total number of platted lots and less than one-percent of the total developable land within the zoning district. Accordingly, the matter did not present a voting conflict. The Florida Commission on Ethics has similarly opined in other cases that no voting conflict was presented where the interests of the public official involved one percent or less of the class. See CEO 90-71 (no voting conflict where town commissioner and wife owned 1.2% of 83 separate lots which would be included in a dredging and improvement project where the cost of the project would be assessed against the property owners); CEO 87-18 (no voting conflict where city-county planning commission member’s sons owned (and leased to a corporation owned by the commissioner) 300 of 97,000 acres included in a comprehensive plan amendment and 300 of 29,000 acres of land that would be subject to change in designation); CEO 84-80 (no voting conflict where city-county planning commissioner owned property in area of proposed down-zoning that would affect approximately 560 property owners).

Here, the combined areas of High Pines/Ponce Davis consist of approximately 1,406 parcels of real property, approximately 930 of which are single-family residential properties. You have explained that your brother and his spouse own one single-family residential property in the area. Here, the class of persons to be affected by the City Commission’s vote on annexation is large and there are no circumstances to indicate that your relative stands to gain or lose more than

the other property owners in the area. Indeed, your relative's ownership interest represents less than one-percent of the total number of properties to be affected by potential annexation and thus, annexation of the area would not inure to your relative's "special private gain or loss." Accordingly, the facts do not present a voting conflict under state law.

II. Voting Conflicts Under Miami-Dade County Code

Miami -Dade County Code § 2-11.1(d)¹, as applied to City Commissioners, addresses voting conflicts as follows:

Additionally, 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 instance the transaction or matter would affect the [Commissioner] in a manner distinct from the manner in which it would affect the public generally. Any [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 Commission] shall: (1) announce publicly at the meeting the nature of the conflict before the matter is heard; (2) absent himself or herself from the Commission chambers during that portion of the meeting when the matter is considered; and (3) file a written disclosure of the nature of the conflict with the [City Clerk] within 15 days after the vote . . .

In contrast to the state law provision, Section 2-11.1(d) does not include "relative" or "immediate family" within the enumerated prohibited relationships that would require a City Commissioner to abstain from voting on a matter before the City Commission.

The facts in the instant matter, that your brother and his spouse own and reside in one of approximately 930 single-family residences in an area being considered for annexation by the City of Coral Gables, do not indicate that you would be directly or indirectly affected by the action of the City Commission and you do not have a prohibited relationship with any person or entity which would be or might be directly or indirectly affected by the City Commission's action as to annexation. Accordingly, the facts do not present a voting conflict under the Miami-Dade County Code.

In consultation with special counsel on ethics, this opinion is issued pursuant to Sections 2-252(e)(1) and (8) and 2-300 of the City Code authorizing the City Attorney to issue opinions and interpretations on behalf of the City.

¹ There is no corresponding provision in the City of Coral Gables Ethics Code.