



To: Mayor and Commissioners

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

*MSR*

RE: Legal Opinion Regarding BDI Construction Company and University of Miami – Coral Gables Campus

Date: May 19, 2018

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The University of Miami (“UM”) has two primary campuses located in Miami-Dade County. The larger campus is the “Main Campus” located in the City of Coral Gables, followed by the “Medical Campus” which is located in the City of Miami, near Jackson Memorial Hospital.

Commissioner Vince Lago is employed by BDI Construction Company (“BDI”), a general contracting, design-build, and construction management company specializing in educational buildings, with approximately 30 employees. According to Commissioner Lago, over the years, BDI has contracted with UM to perform work at both campuses but BDI has not performed any work at the Main Campus since Commissioner Lago was elected to the City Commission in April 2013. UM has now indicated to BDI that it wishes to have BDI perform work at the Main Campus.

This opinion addresses whether BDI performing work at UM’s Main Campus implicates any ethics rules for Commissioner Lago. At the Main Campus, BDI intends to perform facilities and maintenance work which includes, but is not limited to, interior renovations, interior/exterior painting, stucco repair, lighting, electrical, plumbing, and resurfacing of lots. This type of work goes through the City’s permitting and approval processes which are handled by Staff. For this reason, it is very unlikely that UM would need to appear before the City Commission for any approvals. However, in an abundance of caution, this opinion discusses what provisions would be implicated, should UM ever need to appear before the City Commission for an approval of a project being performed by BDI at the Main Campus. In addition, the opinion discusses provisions relating to conflicting employment.

## **Applicable Law and Analysis:**

### Employment:

The Miami-Dade Ethics Ordinance has a provision titled “Conflicting employment prohibited,” (Section 2-11.1(j)) which states:

No [*Commissioner*] shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.

The City of Coral Gables Ethics Ordinance has an identical provision found at Section 2-292 of the City Code.

In analyzing a similar set of circumstances<sup>1</sup>, in INQ 02-59, the Miami-Dade Ethics Commission opined that: “The Conflict of Interest and Code of Ethics Ordinance does not preclude [a Commissioner] from entering into contracts with companies which are subject to regulation by Coral Gables. Generally, most companies operating within Coral Gables are subject to various laws, regulations and rules promulgated by the City.”

The corresponding state law provision (Section 112.313(7), F.S.) relating to conflicting employment states, in pertinent part, as follows:

- (a) No public officer...shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer...; nor shall an officer...of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.
- (b) This subsection shall not prohibit a public officer...from practicing in a particular profession or occupation when such practice by persons holding such public office...is required or permitted by law.

It is well established that this section “does not prohibit [a] commissioner from having a contractual relationship with a business entity which is doing business with a company that is subject to the regulation of...the City. See CEO 93-11, 91-19, 88-43, 85-18, 84-8, and 79-1. Thus, Commissioner Lago is not prohibited from being employed by BDI because it may contract with UM to perform work at its Main Campus.

### Voting - Quasi-Judicial Matters:

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<sup>1</sup> In INQ 02-59, the relationship was closer than in the one at hand, as the Commissioner was an owner and director of the company, rather than an employee.

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."

Therefore, to the extent that UM appears before the City Commission, in its quasi-judicial capacity, for approval on a project that is being performed by BDI, it is recommended that Commissioner Lago recuse himself. Accordingly, Commissioner Lago has indicated that he will do so.

#### 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.

Commissioner Lago is a Senior Project Manager for BDI, and as such, he receives a salary and is eligible for a bonus based on his level of productivity relating to the projects he is assigned to oversee. However, Commissioner Lago has represented that he will not be assigned to oversee any of the work performed by BDI at the Main Campus nor will he be involved with the day-to-day activities relating to Main Campus projects. As an employee of BDI, he has one of the enumerated relationships in (d)(i) and "the transaction or matter would affect the Commissioner in a manner distinct from the manner in which it would affect the public generally." Further, the section requires recusal for any Commissioner "who would or might directly or indirectly profit or be enhanced by the action of the City Commissioners."

Thus, Commissioner Lago's participation in on items relating to a BDI project at UM's Main Campus, may also be prohibited under Section 2-11.1(d). As an employee of BDI, the Commissioner has one of the enumerated relationships with BDI and any action that the City

Commission takes concerning a UM Main Campus project by BDI, would likely affect the Commissioner differently than the public generally.

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.

Given that a vote that affects a UM project at the Main Campus being performed by BDI, would inure to the special private gain or loss of BDI, a principal by which Commissioner Lago is retained, his participation may also be prohibited by Sec. 112.3143, F.S.

In addition to the provisions discussed above, a vote by Commissioner Lago would also likely create an appearance of impropriety. The Miami-Dade Ethics Commission has frequently stated that appearances 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.”)

In conclusion, Commissioner Lago’s employment with BDI does not implicate the conflicting employment provisions but he is advised not to vote matters where UM may appear before the City Commission with regard to a project at UM Main Campus by BDI.

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.

May 2018

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**Cc:** [Throckmorton, Stephanie](#); [Ceballos, Gustavo](#)  
**Subject:** UM-BDI Opinion  
**Date:** Saturday, May 19, 2018 8:29:24 AM  
**Attachments:** [image001.png](#)  
[opinion re BDI - UM.pdf](#)  
[opinion re BDI - UM.docx](#)

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Enga,

Please publish.

Thank you,

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