



Miami-Dade Commission on Ethics and Public Trust

BISCAYNE BAY WATERSHED MANAGEMENT ADVISORY BOARD ETHICS TRAINING

December 6, 2021



Miami-Dade County
Conflict of Interest and Code of Ethics Ordinance
Section 2-11.1, Code of Miami Dade County

Why the Ethics Commission?

- The Miami-Dade County Commission on Ethics and Public Trust is an independent Charter agency of Miami-Dade County, established by vote of the electorate.
- It is charged by local law with interpreting and enforcing the County and various municipal Conflict of Interest and Code of Ethics Ordinances.
- The Ethics Commission has three main functions:
 - **At the front end**, the Ethics Commission provides training and instruction to elected officials, board members, employees and persons that transact with local government.
 - **After that**, the Ethics Commission provides individualized ethics guidance regarding prospective conduct.
 - **At the tail end**, the Ethics Commission reviews past conduct for potential ethics violations in enforcement actions.

Why the County Ethics Code?

Sec. 2-11.39.2, County Code

Application of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance:

The provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall be applicable to county boards.

“Advisory Personnel”

Section 2-11.1.(b)(4), Code of Ethics

The County Ethics Code shall apply to County personnel as defined:

Advisory Personnel are defined as members of those County Boards whose primary responsibility is to recommend legislation, policy or give advice to the Board of County Commissioners.

Practice Tip & Preferences:

Please ask before you act

- The Ethics Commission can only provide ethics *guidance* prospectively, meaning regarding future or ongoing transactions. Past actions are handled as potential *enforcement* matters.
- As regards board members, some board members reach out directly, some with or through staff, some with or through the County Attorney or municipal attorneys, and some never directly and only through counsel. All manner is appropriate and welcomed.
- Staff will have to confirm accuracy of transaction fact patterns prior to the issuance of the opinion.
- As a courtesy, we will let you know what the opinion is before it issues as a numbered and published INQ. This is the only way opinions issue.
- If the issue is novel, the opinion will be presented to the Ethics Commission in open session and the requester will be invited to participate.

The Code of Ethics:

Administered and Interpreted by the Commission on Ethics &
the State Attorney's Office has Concurrent Jurisdiction

- The State Attorney's Office (SAO) has **concurrent** jurisdiction over all the provisions of the Conflict of Interest and Code of Ethics Ordinance.
- If any of these provisions are prosecuted by the SAO they are classified as 2nd degree misdemeanors and are punishable by a **\$500 fine and/or 30 days imprisonment or both.**



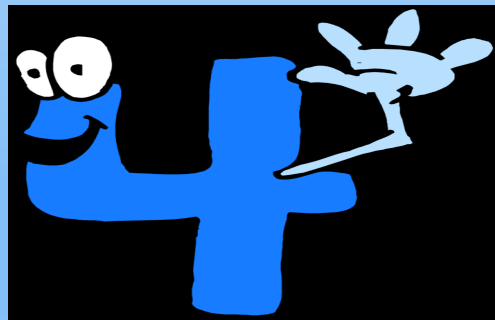
Gifts

A public employee or board member may never solicit or accept a gift if there is a nexus between the gifting transaction and the employee's or member's public charge.



Four Basic Rules: Easy to Follow

- You may never *solicit* a gift if there is a nexus to your public position.
- You may never *accept* a gift if there is a nexus to your public position.
- You may never *accept* a gift from *certain parties*.
- You may accept gifts from friends and families unrelated to your public position, but you may have to report them.



Prohibited Gifts

Miami-Dade Ethics Code Sec. 2-11.1(e)(3)



- “[Public officials, employees, and board members] shall neither solicit nor demand any gift.” Sec.2-11.1.1(e)(3)
- No elected official, employee, or board member may accept any gift for or because of:
 - An official public action taken or to be taken, or which could be taken;
 - A legal duty performed or to be performed, or which could be performed; or
 - A legal duty violated or to be violated, or which could be violated by any elected official.
- It is also a violation to offer the gift in exchange for the above.

Gifts Disclosure

Miami -Dade Ethics Code Sec. 2-11.1(e)(4)

What gifts must be disclosed?

Any board member receiving a gift in excess of \$100 must report it by filing a gift disclosure form.

How must a gift be disclosed?

This disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for “local officers” with the Florida Secretary of State.

When must the gift disclosure be filed?

No later than July 1 of each year for the preceding calendar year ending December 31.

Quarterly (3/31, 6/30, 9/30, 12/31)

FORM 10 ANNUAL DISCLOSURE OF GIFTS FROM GOVERNMENTAL ENTITIES AND DIRECT SUPPORT ORGANIZATIONS AND HONORARIUM EVENT RELATED EXPENSES			
LAST NAME -- FIRST NAME -- MIDDLE NAME:		THIS STATEMENT REFLECTS GIFTS AND HONORARIUM EVENT RELATED EXPENSES RECEIVED DURING CALENDAR YEAR 20____	
MAILING ADDRESS:		DO NOT FILE THIS FORM IF YOU HAVE NOTHING TO REPORT ON IT.	
CITY: ZIP: COUNTY:		NAME OF AGENCY:	
		OFFICE OR POSITION HELD:	
PART A -- GIFTS (HAVING A PUBLIC PURPOSE) FROM GOVERNMENTAL ENTITIES			
NAME OF PERSON PROVIDING GIFT(S)	TOTAL VALUE OF GIFTS FROM THAT PERSON	DESCRIPTION OF INDIVIDUAL GIFTS	DATE EACH GIFT RECEIVED
PART B -- GIFTS FROM DIRECT SUPPORT ORGANIZATIONS			
NAME OF PERSON PROVIDING GIFT(S)	TOTAL VALUE OF GIFTS FROM THAT PERSON	DESCRIPTION OF INDIVIDUAL GIFTS	DATE EACH GIFT RECEIVED
PART C -- HONORARIUM EVENT RELATED EXPENSES			
	EVENT #1	EVENT #2	INSTRUCTIONS on who must file this form and how to fill it out are on the reverse side.
NAME OF PERSON PAYING EXPENSES			
ADDRESS OF PERSON			
AFFILIATION OF PERSON			
AMOUNT OF HONORARIUM EXPENSES			
DATE(S) OF THE EVENT			
DESCRIPTION OF EXPENSES PAID EACH DAY			FILING INSTRUCTIONS for when and where to file this form are located on the reverse side.
TOTAL VALUE OF EXPENSES FOR THE EVENT			
IF ANY OF PARTS A THROUGH C ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE <input type="checkbox"/>			
REMEMBER TO ATTACH COPIES OF ALL STATEMENTS PROVIDED TO YOU BY PERSONS AND ENTITIES PROVIDING OR PAYING FOR THE GIFTS AND HONORARIUM EVENT RELATED EXPENSES DISCLOSED ON THIS FORM. YOU MUST DISCLOSE ALL OF THESE KINDS OF GIFTS AND EXPENSES EVEN THOUGH YOU DID NOT RECEIVE A STATEMENT OR REPORT FROM THE PERSON OR ENTITY PROVIDING THEM. YOU MAY EXPLAIN ANY DIFFERENCES BETWEEN THE ATTACHED REPORTS AND STATEMENTS AND THE INFORMATION PROVIDED ON THIS FORM BY ATTACHING AN EXPLANATION TO THE FORM.			
SIGNATURE:		DATE SIGNED:	

Exploitation of Official Position

Exploitation of Official Position Prohibited

Miami-Dade Ethics Code Section 2-11.1(g)

No board member shall use or attempt to use his or her official position to secure a special benefit or privilege for himself or herself or others.

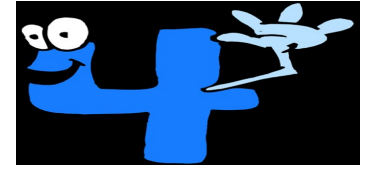
Official Action Directly or Indirectly Affecting a Business in Which Official or Family Member Has a Financial Interest

Miami-Dade Ethics Code, Sec. 2-11.1(n)

No board member may: Participate in any official action that may directly or indirectly affect a business in which the member or his or her family member has a financial interest.

Financial Conflicts of Interest

So, pause and another “Four” to remember



- You may be prohibited from transacting with the County, *individually*.
- You may be prohibited from transacting with the County, *through a company*.
- Your *immediate family member* may be prohibited from transacting with the County, *individually*.
- Your *immediate family member* may be prohibited from transacting with the County, *through a company*.

Pause and ask for guidance



Prohibition on Transacting Business with Local Government

Miami-Dade Ethics Code 2-11.1(c)(1) and (d)

- Board members and their immediate family members are prohibited from entering a contract or transacting any business with their municipality in which the elected official or his or her immediate family has a financial interest, direct or indirect, unless waived by governing board.
- Immediate family members: spouse, domestic partner, parents, stepparents, children, stepchildren.
- Transaction or contract is voidable.
- Willful violation constitutes malfeasance – and may lead to forfeiture of office/position.

Outside Employment

Prohibition on Conflicting Employment

Miami-Dade Ethics Code, Sec. 2-11.1(j)

- No advisory board member may:
 - Accept other employment;
 - Which would impair his or her independence of judgment;
 - In the performance of his or her public duties.



Voting Conflicts

Voting Conflicts

Sec. 2-11.1 (v), County Ethics Code



Advisory board members may not vote on any matter if the member will be directly affected by the board action **and** the board member has any of the following relationships with the persons or entities appearing before the board:

Officer, partner, consultant, fiduciary, stockholder, debtor, director, of counsel, employee, beneficiary, bondholder, creditor.

Voting Conflicts

Best advice on what you should do:

- Announce your conflict publicly in advance.
- Absent yourself from the room.
- File disclosure (State Form 8B) with your board liaison.



Remember: You *Gotta* Vote even if you are grumpy.

Section 286.012, Florida Statutes

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain unless there is a possible conflict of interest.



Government in the Sunshine
F.S. Section 286.11



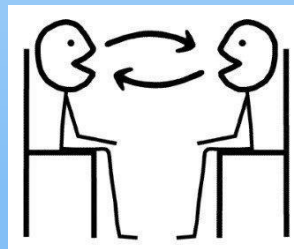
"First of all, this meeting never happened"

Basic Rules

- Meetings/boards of state or municipal government or political subdivisions must be open to the public.
- No formal action of public boards shall be binding unless taken at such a meeting.
- Reasonable notice must be provided to the public of all such meetings.
- Minutes of such meetings must be recorded promptly and shall be open to public inspection.
- No two members of the board may privately discuss board business.

Per Se Meetings

“In order for there to be a violation of F.S. 286.011, a meeting between **TWO OR MORE** public officials must take place which violates the spirit, intent, and purpose. The obvious intent of the [Sunshine Law] was to cover any gathering of some of the members of a public board where members discuss some matters on which foreseeable action may be taken by the board.” (Emphasis added) *Hough v. Stemberge*, 278 So.2d 288 (Fla. 3rd DCA 1973)

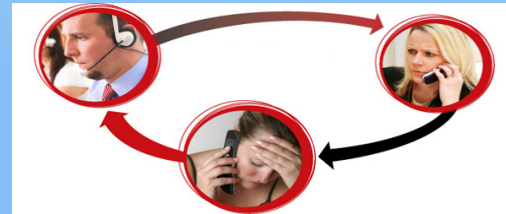
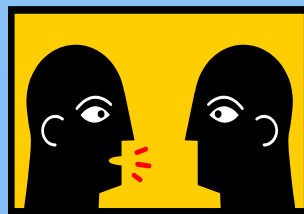
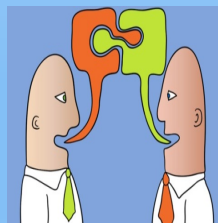


Public Access to Meetings

- Board meetings should be held in buildings that are open to the public and not at inaccessible locations such as private homes.
- Avoid private lunches or dinners in public dining rooms prior to meetings.
- The building cannot be locked or have restrictions that unduly impede public access, e.g., cannot be in a place requiring name or I.D. for access (AGO 2005-13)

One-Way, Two-Way, and Liaison Communications

- Two-way communications between any two or more members of a public board about board business are always prohibited. Includes oral, written and electronic communications.
- The Sunshine Law prohibits one-way oral communications between board members, i.e., where one party speaks, and the second party does not respond. A one-way electronic or written communication by a board member is permissible if it is kept as a public record and there is no response to it from another board member except at a public meeting.
- It is not permissible to intentionally communicate to another board member through a third party.



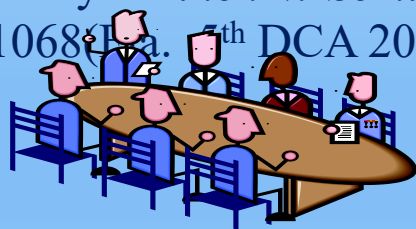
Opportunity to be Heard, F.S. Sec. 286.0114

Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.



Advisory & Fact-Finding Boards

- Advisory boards created by government which make recommendations to decision makers but themselves lack decision-making authority may be subject to the Sunshine Law because they are deemed part of the decision-making process.
- Limited exception for advisory committees established for fact-finding or information gathering. Fact-finding exception does not apply to boards that have “ultimate decision-making authority.” *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 7th DCA 2008)



Stop Recording Me!

While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings.



How to Cure a Violation

The civil consequences of a violation, i.e., voiding the decision or nullifying the process *ab initio*, may be avoided if the board does not perfunctorily ratify or ceremoniously accept a tainted decision, but takes independent final action in the sunshine following a public discussion of any matters taken up privately. *Tolar v. School Board of Liberty County*, 398 So. 2d 427 (Fla. 1981)

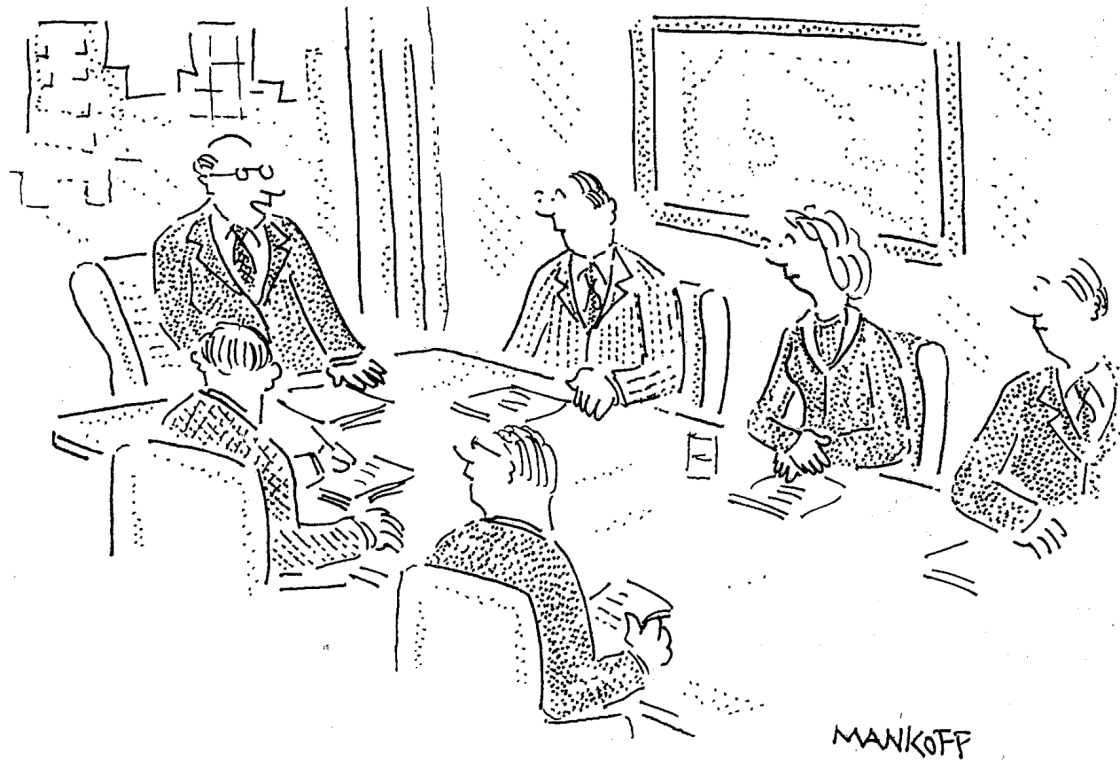


Penal Sanctions

There are criminal sanctions including a term of imprisonment of up to 60 days and a fine of \$500 for knowingly violating the Sunshine Law.



Florida Public Records
Chapter 119, Florida Statutes



"Let's never forget that the public's desire for transparency
has to be balanced by our need for concealment."

Public Records: Defined

“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, or private entity “acting on behalf” of a public agency, which are used to perpetuate, communicate, or formalize knowledge.



Public Access

Every person who has custody of a public record shall permit the records to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records or his designee.



What about private device communications?

- Whether the communication originates or is received by a private device (cell phone, computer, tablet) is irrelevant to the communication's status as a public record.
- Communications include e-mails and text exchanges on private telephones.



Exemptions to Disclosure

- All exemptions strictly construed.
- Active criminal investigative and intelligence records.
- Active commission on ethics and inspector general investigations.
- Active Whistleblower investigations.
- Patient medical records.
- Student records.
- Social Security records.
- Bank/Credit/Debit account numbers.
- Personal information of *specified* categories of public officials and employees



Penal and Civil Penalties

- A public officer who “knowingly” violates the provisions of F.S. 119.07(1) is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by up to one year in prison, or \$1,000 fine, or both.



- A petitioner who claims to be entitled to inspect and/or copy public records is entitled to an immediate hearing. Attorney’s fees are recoverable by the petitioner even where access is denied on a good faith but mistaken belief that the documents are exempt from disclosure. Recent amendment requires notice to the agency to allow compliance.

Charging of Fees

- 15 cents per one-sided copy
- 20 cents per two-sided duplicated copy
- \$1.00 per certified copy
- Reasonable special service charge for: extensive use of clerical or supervisory labor; or information technology resources based on actual cost incurred by agency.
- If a local government chooses to use a third-party vendor to maintain public records and provide records to requesting parties, the local government agency cannot pass along unreasonable costs to the public records requester.

Hot topics

- What processes are being used in local government to secure and archive electronic communications generated on privately owned devices used by elected officials, executive staff, board members, or employees, such that texts and emails are available upon demand by a records requester?
- Who is the responsible party and who is liable in a quasi-judicial Bill of Rights enforcement action or a civil action under Chapter 119, Florida Statutes?

Citizens' Bill of Rights

Citizens' Bill of Rights

Miami-Dade Home Rule Charter, May 1957



- Commission on Ethics empowered to review, interpret and render advisory opinions regarding Citizens' Bill of Rights (Section 2-1072, Miami-Dade County Code since 1997)
- Commission on Ethics given authority to enforce Citizens' Bill of Rights and impose penalties set out in Section 2-11.1(cc)(1) of Miami-Dade County Code of Ethics Ordinance (2012 Referendum).



Guarantees All Citizens:

- Prompt and convenient service from local government;
- Truthful information from public servants.
- Right to inspect and copy public records.
- Proper notice of and opportunity to participate in public meetings.

Contact Information

Overtown Transit Village - North Tower
701 Northwest 1st Court, 8th Floor
Miami, Florida 33136

Telephone: (305) 579-2594

Hotline: (786) 314-9560

General Email: ethics@miamidade.gov

On behalf of the Commission on Ethics

Q & A

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Community Outreach Coordinator

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(305) 579-2594

(305) 350-0630

On behalf of the Commission on Ethics



Nelson C. Bellido, Esq., Chair
Dr. Judith Bernier, Vice Chair
Judge Lawrence A. Schwartz
Wifredo “Willie” Gort
Professor Charlton Copeland, Esq.

Jose Arrojo, Executive Director

Thank you for your attention

All done

