



To: Vince Lago, Vice Mayor

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

RE: Legal Opinion Regarding BDI Construction Company and Gulliver Schools' Courtyard Beautification Project

Date: May 3, 2019

Gulliver Schools has four (4) campuses, one of which is located within the jurisdictional boundaries of the City of Coral Gables ("the City"). The campus located in the City is named "Academy – Marian C. Krutulius Campus" ("the Academy").

Vice Mayor Vince Lago¹ is employed by BDI Construction Company ("BDI"), a general contracting, design-build, and construction management company, with approximately 30 employees. BDI specializes in institutional construction focusing on schools, hospitals, and the like. According to the Vice Mayor: In approximately March 2019, Gulliver Schools called several construction companies for a project titled "Courtyard Beautification" at the Academy; those construction companies, including BDI, submitted qualifications and BDI was ultimately chosen as the construction manager, through a competition process. Accordingly, Vice Mayor Lago has requested an opinion that addresses whether BDI's anticipated work at the Academy implicates any ethics rules for him.

The Courtyard Beautification Project entails a general remodel of the Academy's courtyard which includes, but is not limited to, replacing railings, shielding the HVAC system, installing pavers, and relocating columns. The Development Services Department has confirmed that the work detailed in the plans goes through the City's administrative permitting and approval processes which are handled by Staff. Also, the Zoning Official has reviewed the project and

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 Section 2-28 of the City Code which apply 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.

determined that the project does not require City Commission approval.² Applicable ethics provisions are discussed below.

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 circumstances³, 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,

² The project will require approval from the Board of Architects (BOA). Should a BOA appeal result from the presentation and ultimately be heard by the City Commission, as an appeal, the Vice Mayor should recuse himself from participating and voting on the item as he may have a voting conflict under Sec. 2-11.1(d) of the Miami-Dade Ethics Code and his participation would create an appearance of impropriety.

³ 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.

Vice Mayor Lago is not prohibited from being employed by BDI because it has a pending contract with Gulliver to perform work at the Academy.

In addition, Sec. 112.316, F.S., “Construction,” specifically states that Chapter 112, F.S. (State Ethics Code) shall not be construed “to prevent an officer...of a...city...from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of such officer...” It is important to analyze Sec. 112.313, F.S. taking Sec. 112.316, F.S. into consideration.

Appearances

The Miami-Dade Ethics Ordinance has a provision titled “Certain appearances and payment prohibited,” (Section 2-11.1(m)) which states, in pertinent part:

No [*Commissioner*] shall appear before any [City] board or agency to make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person.

The City of Coral Gables Ethics Ordinance has an identical provision found at Section 2-295 of the City Code.

In accordance with both provisions, the Vice Mayor should not appear before any City board regarding the project and should not meet with City staff regarding the project. It is, therefore, recommended that other BDI employees handle any meetings with City Staff relating to the project. (*See* RQO 12-13, and 08-30)

Exploitation

The “Exploitation of official position” section of the Miami-Dade Ethics Code, however. Section 2-11.1(g), states:

No [*Commissioner*] shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions ordained or adopted or hereafter to be ordained or adopted by the [*City Commission*].⁴

In addition to the “Appearance” section discussed above, the Vice Mayor should be aware of this section. While it is assumed that the Vice Mayor would not purposely exploit his official position, he should be cognizant that serving as the “face” of the project before City Staff could result in favorable treatment which could also implicate the “exploitation of official position” provision. Consequently, as stated above, it is recommended that other BDI employees handle the delivery of applications and similar documents, as well as any meetings with City Staff relating to the project.

⁴ The corresponding state law provision requires *corrupt intent* and is therefore not addressed in this opinion.

In conclusion, BDI, the Vice Mayor's employer, may contract with Gulliver to serve as its construction manager at the Academy for the Courtyard Beautification Project but the Vice Mayor may not appear before any City board with regard to the project and should not deliver project documents or meet with City staff regarding the project.

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 2019

From: [Ramos, Miriam](#)
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[image003.png](#)

Enga, please publish ASAP.

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CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING BDI CONSTRUCTION COMPANY AND
GULLIVER SCHOOLS' COURTYARD BEAUTIFICATION PROJECT

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