



Miami-Dade Commission on Ethics & Public Trust
Investigative Report

Investigator: Susannah Nesmith
Complainant: COE Self-Initiated

Case No.: PI19-29
Subject/Case Name: Village funded charities

Date Opened: 7/2/19

Date Submitted: 8/5/2019

Allegation(s):

It was alleged that members of the Key Biscayne Village Commission have conflicts of interest when they vote to fund certain non-profit organizations because of their connections to those organizations. One member, Ed London, has a donor-advised fund managed by the Key Biscayne Community Foundation, which receives \$125,000 directly from the Village and manages other money the Village allocates for events like the Fourth of July parade. The Mayor serves as treasurer of the Key Biscayne Chamber of Commerce, which also receives funding from the Village.

Relevant Law:

Sec. 2-11.1. – Miami-Dade County Conflict of Interest and Code of Ethics Ordinance

(d) Additionally, no person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners 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 Board of County Commissioners: (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 person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County 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..

Investigation:

A review of the corporate records and most recent annual reports of the Key Biscayne Chamber of Commerce reveals that Mayor Michael Davey is the registered agent of the Chamber. He is not on the board, nor is he the treasurer.

Council member Brett Moss, however, is a member of the Chamber Board of Directors, according

to the Chamber's website. The Village allocated \$77,500 to the Chamber in FY2019, as it did in FY2018. Moss was interviewed on July 16, 2019 and he said he was elected to the Chamber board of directors in 2016 and that he voted for both budgets. The Chamber has asked for \$81,375 for the coming year.

Moss is also secretary of the board of the Key Biscayne Historical and Heritage Society, which is budgeted to receive \$15,000 from the Village this year and received \$15,506 last year. The Society is asking for \$15,000 for the coming year. Mr. Moss said he was asked to be secretary of the Society in 2016 and voted on both budgets.

Mr. Moss noted that he is a member of the Rotary Club, which also receives money from the Village, but he is not on the board of directors.

Former Vice Mayor Franklin Caplan is president of the Historical and Heritage Society.

Mr. Caplan was interviewed on Aug. 2, 2019. He said he was asked to be president of the Society in 2018. Beginning in 2010, he served two terms as Mayor and then a term as a Council Member. He was Vice Mayor in 2018. He said he does not consider his discussion of the Society during the September budget workshop "advocating" for the Society's line item in the budget. He emphasized he receives no personal benefit from his work with the Society and gets no benefit from the Village's allocation of money to the Society.

At the Sept. 11, 2018 budget meeting, Caplan answered then-Mayor Myra Lindsay's questions about the Society. (The discussion begins at 52:48.) The Mayor repeatedly questioned why the village was spending \$15,000 a year to store a collection that had not been catalogued.

"I will bring up what I have brought up for the last eight years and it is the Historical Society payment for \$15000 to pay for storage space over by the Starbucks. We are paying what is probably the most expensive storage per square foot for a collection of which we have no idea what is in there."

She mentions that Caplan offered a few years ago to go through the collection.

Mayor Lindsay: "And I don't know who's in charge of the Historical Society. There's been a very large void in leadership because of a death... It's absolutely insane that we are paying these prices. In the last eight years that I've been here we have spent \$150,000 storing something we have no idea what it is."

Caplan suggests that the Society is not paying for storage space.

Caplan:- "As far as the leadership and curatorship..."

Mayor Lindsay: "There has been no, I..."

Caplan: "There has been. There has been. Come to our meeting next week. If you don't like what you hear, you can bring it up again, as you have in the past."

A member of the audience confirms the Society is paying rent and defends the storage expenditure. She suggests the Mayor wants to throw the artifacts the Society has collected away. The Mayor quickly responds that she doesn't want to do that.

Mayor Lindsay: "We could be displaying this. It's just eight years of paying rent with nobody having any clue. We just need to have a little accountability."

Caplan: "The idea of displaying it is what this group has wanted to do for years. The time that it takes to actually figure out what is displayable, in other words what is not so fragile and can't be

exposed to light, is a process. I think we're at a place where we can start displaying this stuff. The library was conceived, at least in our minds, as a place to house the permanent exhibition space."

Mayor Lindsay: "But in the meantime, we have a community center, we have City Hall. We have a library where we can display this stuff. I just envision this as a big room kind of with hoarder piles and I think we just need to address it.... I'm just trying to get a report."

Discussion of council members being able to view the collection follows. Caplan said that can be arranged.

(The discussion ends at 1:01:38)

A few minutes later Caplan broke into the discussion of another budget item to inform the Council that he had just learned, via text message, that approximately half of the Village's allocation to the Society pays for storage and half pays for events and programming.

On June 10, 2019, after he was no longer on the Council, Caplan authored a memo to the Council and the Manager on behalf of the Society requesting continued funding of the Society for \$15,000. As of July 16, 2019, Caplan was not registered as a lobbyist with the Village.

Village Attorney Stephen Helfman confirmed that the Village Council does not pass resolutions regarding the funding of these organizations, instead just voting on the budget, which includes it. Moss and Caplan both voted to approve the budget that included funding for the Chamber and the Society, according to the minutes.

Helfman said that London's donor advised fund is managed by the Foundation, and that his fund pays the same administrative fee that the other donor advised funds managed by the Foundation pay. London receives no benefit from the Foundation and his fund receives no portion of the Village allocation to the fund.

According to the Foundation's 2017 Form 990 (the most recently available) the Village gave the Foundation \$407,000 in that year. More recent Village budgets show the Village has granted the Foundation \$125,000 directly the past two years and also funded several organizations and efforts, like the Historical Society, through the Foundation. The Fourth of July parade, a car show and a senior's club are among those organizations and efforts funded through the Foundation.

Robert Meyers, who also advises the Village called to report that Chad Friedman, another Village attorney, said that the executive director of the Key Biscayne Community Foundation periodically speaks at council meetings, but generally that's when she is asked to by the Council or Manager.

On Aug. 7, 2019, Melissa White, executive director of the Foundation, was interviewed after she contacted COE Director Jose Arrojo. She explained that the Foundation serves as the fiscal sponsor of several not-for-profit organization, including some that receive funding from the Village. She said normally the Foundation charges a two percent administrative fee to donor-advised funds, like London's, and a four percent fee to organizations for which it is the fiscal sponsor. However, in the case of the organizations funded by the Village, like the Historical Society, the Foundation does not end up recouping that money. This is because the Foundation pays the Society's bills with whatever the Society has raised from donations. When that money is used up, the Foundation pays whatever other bills need to be paid and then submits invoices to the Village to reimburse it for those expenses. So the administrative fee is never charged for the money the Village allocates.

Documents/Exhibit Review:

(All documents are in the digital file.)

The video of the Sept. 11, 2018 budget hearing.
<https://www.youtube.com/watch?v=KjBEE1SUxMc>

Minutes of the Sept. 11, 2018 budget hearing.

The full agenda of the June 18, 2019 budget hearing. (It includes a report on the Society from Caplan.)

The video of the June 18, 2019 budget hearing.
<https://www.youtube.com/watch?v=EFfrgxGqOSI&feature=youtu.be>

Sunbiz records for the Society, for the Chamber and the Foundation for 2018 and 2019.

The list of board members posted on the Foundation's website.

The list of 2019 board members of the Chamber.

The approved budgets from FY2018 and FY2019.

The Key Biscayne list of registered lobbyists for 2019.

Review and Analysis:


Sec. 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance states, in pertinent part, that "no person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners 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 Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary..."

The plain language of the ordinance would seem to prohibit former Vice-Mayor Caplan and current Council member Moss from voting or participating in any way on any item that affects the respective organizations they serve or served as officers in.

However, our research has discovered an informal opinion, (INQ14-212) which was issued by former Executive Director Joseph Centorino. That opinion addressed the issue of whether or not County Commissioner Dennis Moss could vote on the County budget which included an allocation of funds to the Richmond-Perrine Optimist Club where Commissioner Moss served as the Executive Director of the Optimist Club. Centorino concluded that Moss could vote on the budget despite the clear language of 2-11.1(d). In reaching this conclusion, Centorino cited, among other reasons, the "tiny portion" of money the Optimist Club was receiving compared to the large size of the County budget.

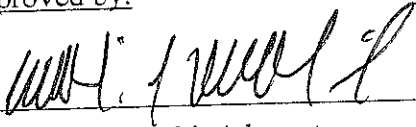
This informal opinion, were it to be adopted and applied in all situations, would require a second, new analysis, which could be quite subjective, to determine how "large" or "tiny" a given allocation to an organization was compared to the overall size of the County or a municipal budget. It is likely that such an idiosyncratic analysis would result in vast discrepancies among similarly situated elected officials depending upon the relative size of their budgets.

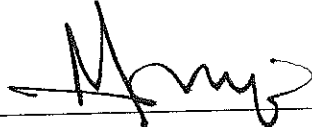
Nevertheless, INQ14-212 does exist and offers some precedential value. It is not likely that enforcement action would be merited against former Vice-Mayor Caplan or Councilman Moss considering the miniscule allocation amounts from the Key Biscayne budgets. However, it is recommended that the better approach to these conflict situations would be to adhere to the plain language of the ordinance. Accordingly, it is recommended that this matter be treated as an RQO to seek formal guidance from the Ethics Commission which is vested with the authority to interpret the Ethics Code.


COE Investigator Susannah Nesmith

9/9/19

Approved by:


Michael Murawski, Advocate


José Arrojo, Executive Director

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