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March 30, 2016

TOWN COUNCIL
Judy Paul
MAYOR

Bryan Caletka
Councilmember
Town of Davie

Re: Legal opinion on whether a Councilmember, who is also an employee for Western High School, may vote on Community Endowment Funds requested by Western High School's WiredCats Robotics Team.

COUNCILMEMBERS

Dear Councilmember Caletka:

Bryan Caletka
Councilmember
District 1

Thank you for your request for a legal opinion on this important matter. You have asked "whether a Councilmember, who is also an employee for Western High School, may vote on the Community Endowment Funds requested by Western High School's WiredCats Robotics Team?" In preparation for this opinion I have reviewed the Florida Statutes, Florida legal case law, Florida Attorney General Opinions, Florida Commission on Ethics Opinions, and Broward County Ethic Opinions.

Caryl Hattan
Councilmember
District 2

Under Florida law, elected officials have an affirmative duty to vote on all matters before them, and abstaining from a vote is prohibited unless there is or appears to be a possible conflict of interest.¹ The identification of a special private gain or loss to a member of the Town Council is necessary for his disqualification.² A "special private gain" almost always refers to a financial interest of the public official that will be directly enhanced by the vote in question.³ Additionally, the gain must be direct and immediate.⁴

Susan Starkey
Councilmember
District 3

The four factors that must be considered when deciding if a special private gain or loss is applicable are: 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; and 4) The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when comparing to other members of the class.⁵

Marlon Luis
Vice Mayor
District 4

¹ George v. City of Cocoa, Fla., 78 F.3d 494, 496 (11th Cir. 1996). See also F.S. § 286.012.

² City of Cocoa, at 496. See also F.S. § 112.3143(3)(a).

³ City of Cocoa, at 496. See also F.S. § 112.3143.

⁴ City of Cocoa, at 497. See also F.S. § 112.3143.

⁵ F.S. § 112.3143(1)(d).

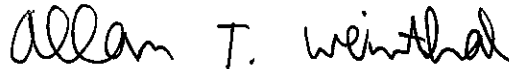
You have informed me that you are not part of the WiredCats Robotics Team. In addition, you do not have any relatives or children who are a part of the WiredCats.

The funding at issue will come from the Community Endowment Fund. Expenditures of this fund are decided by majority vote by the Town Council. Community Endowment funds are used on a yearly basis to assist not for profit organizations that provide services to the Town of Davie residents.

Taking all of this into consideration, it is my legal opinion that Councilmember Caletka does not have a conflict of interest in voting on the Community Endowment Fund for the Western High School WiredCats. Councilmember Caletka will not receive any special private gain or loss. None of Councilmember Caletka's relatives will receive any special private gain or loss.

This opinion addresses only Councilmember Caletka's vote on the Community Endowment Fund for the Western High School WiredCats.

Respectfully submitted,

Handwritten signature of Allan T. Weinthal in cursive script.

Allan T. Weinthal, Esq.