

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, October 18, 2016 2:01 PM
To: Sanchez, Rodzandra (COE)
Subject: Thomas Pepe, City Attorney, City of South Miami (Exploitation, Section 2-11.1(g)) INQ 16-235

INQ 16-235 Pepe

From: Centorino, Joseph (COE)
Sent: Tuesday, October 18, 2016 1:44 PM
To: 'tpepe@southmiamifl.gov' <tpepe@southmiamifl.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: INQ 16-235 Thomas Pepe, City Attorney, City of South Miami (Exploitation, Section 2-11.1(g))

Mr. Pepe:

You have inquired whether a South Miami Commissioner may read a newspaper article from the dais during a City Commission meeting that excoriates the Republican Party, certain of its leaders, as well as its Presidential nominee, Donald Trump. Although the article does not explicitly contain words stating an endorsement of the candidacy of anyone, it is such an explicit denunciation of one of the two major candidates in a political race, that it cannot be interpreted in any way other than an attempt to influence voters to vote against Donald Trump. It is my opinion that the reading of this article from the dais during a Commission meeting would constitute Exploitation of Official Position, pursuant to Section 2-11.1(g) of the County Ethics Code, and, therefore, that the Commissioner involved should be advised against taking this action.

In the past this agency has opined that the use of one's official position to exercise influence in an election constitutes Exploitation under Section 2-11.1(g). See INQ 14-205. It is beyond doubt that the purpose behind a Commissioner's reading of the article in question is to influence the judgment of voters in the upcoming partisan presidential election, and to influence, thereby, the result of the election. As such, it would be an Exploitation of Official Position under the County Ethics Code if he or she were to do so.

Additionally, Section 104.31(1)(a), Florida Statutes, which may be enforced either as a criminal misdemeanor or as an ethics violation punishable by the State of Florida Commission on Ethics, prohibits any state, county or municipal employee from using his or her official authority or influence for the purpose of interfering with an election or influencing the result thereof. Further, you are probably aware that in a case before the Miami-Dade Commission on Ethics, a South Miami Commissioner was fined for endorsing a candidate on the dais during a public meeting. See *In Re: Josh Liebman*, C#13-41, in which it was deemed a violation of Section 8A-3(b) of the City of South Miami Code of Ethics, which prohibits any official or employee from using public property or resources for the private advantage of himself or any other person. The activity in question may, therefore, constitute a violation not only of the County Ethics Ordinance, but also of State law and your own city ordinance.

There is nothing to prohibit the Commissioner in question from exercising his or her right under the First Amendment to speak as a private citizen on his or her own time and at his or her own expense, regarding any political candidate. However, public officials are constrained under the foregoing provisions from using their official positions, authority, or public resources to influence an election on behalf of or against a political candidate. This includes making a blatantly political statement intended to influence an election by the reading of an article from the dais during a City

Commission meeting excoriating those who support a political candidate, and, by implication, the political candidate himself.

Sincerely,

Joseph M. Centorino

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From: Thomas Pepe <tpepe@southmiamifl.gov>
Date: October 18, 2016 at 9:27:42 AM EDT
To: "Diaz-Greco, Gilma M. (COE)" <GDIAZGR@miamidade.gov>
Subject: Reading a political column from newspaper

One of my commissioners would like to read a political opinion from a newspaper at tonight's meeting. The article does not endorse any candidate but it excoriates the republican party because it has promoted candidates like Donald Trump who promote fear, race-baiting, misogyny, mistrust, ignorance and anger. And ending with "...history will condemn you. History won't forget your cravenness. Because you knew."

Do you know of any provision of the ethics code that would be violated by the commissioner reading such an article?
The following is the complete article.

Jeffrey Young Senior Reporter, The Huffington Post

You knew. You all knew. You knew the whole time who and what [Donald Trump](#) is.

Mike Pence. [Paul Ryan](#). Mitch McConnell. [Ted Cruz](#). Chris Christie. [Newt Gingrich](#). Orrin Hatch. John McCain. [Marco Rubio](#). [Virtually all of you](#).

You heard every terrible thing he said. You watched every inexcusable thing he did. You knew Trump is a race-baiting, xenophobic, misogynistic, authoritarian con man. You knew about his insatiable appetite for power, his bottomless need for affirmation, his dangerous impulsiveness and uncontrollable temper. You knew he was a huckster who ruined businesses and lives. You knew he debased your [party](#), and you personally. You knew.

You knew he [waged](#) a racist campaign against the [president's](#) legitimacy. You knew he [called immigrants](#) rapists. You knew he [advocated](#) forbidding Muslims from American soil. You knew he said a federal judge wasn't qualified because [Mexican blood](#) flowed through his veins. You knew he [besmirched](#) the parents of a dead soldier. You knew he [mocked](#) prisoners of war. You knew he [courted](#) white supremacists. You knew he [admires](#) dictators. You knew he [incited violence](#). You knew he [lies](#) — blatantly, shamelessly, ceaselessly.

You knew all of that, and you asked Americans to [elect](#) him president anyway. Shame on you. You knew.

Your condemnations are and have always been [empty](#). Your sudden [rush to abandon](#) Trump — after what's merely the [most recently uncovered](#) manifestation of his [hatred for women](#) — is motivated by the same venal cowardice that led you to support him in the first place.

You knew [Hillary Clinton](#) isn't the [monstrous caricature](#) you spent decades depicting. You knew she is — like each and every one of you — an ordinary politician, in all the ways that word has positive and negative connotations. You knew she would govern in a perfectly normal way.

You knew this, but you told voters she was more dangerous than Trump. More evil. A greater threat to the republic. And this, after so many of you spent the presidential [primary](#) campaign warning the U.S. that Trump is exactly who he appears to be. But you fell in line. You knew, and you endorsed him anyway.

You did all of this in service of ideology. You did this because you believe Trump will enact the policies you favor to allow businesses to pump more pollution into our air and water, to take away food and medicine from the neediest among us, to disenfranchise minority voters, to slash taxes for the rich.

Your voters elevated Trump nearly to the White House, and he may yet make it there, in spite of everything. They did so because you have primed them for Trump for more than half a century. Half a century of barely concealed [appeals to racism](#), of fomenting fear and hatred and coaxing the worst instincts out of enough voters to gain power. Years of nurturing — on AM radio and cable TV and the internet — a propaganda machine that encourages ignorance, mistrust and anger.

You have lost control of the golem you created.

You made promises you knew you couldn't keep, and your voters finally lost faith in you. Now, they're turning on you.

They follow a man who doesn't even share your beliefs. You're learning just how little those voters cared about conservatism and how very much they cared about stomping their boots on the throats of people who don't look like them or love like them or think like them. You made this possible by making villains out of African-Americans, Latinos, LGBTQ people, the poor.

When this is all over, you may win your own re-elections. You may retain control of Congress and of governors mansions, state legislatures, county councils and school boards all across the nation. You may sigh in relief that you survived. You may even — and not terribly long from now — regain the presidency and resume carrying out your agenda. Your own careers may be successful.

But history will condemn you. History won't forget your cravenness. Because you knew.

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