



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

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| Case No.: K13-091 | Case Name: South Miami Flyer | Date Open: | Date Closed: |
| Complainant(s): Valerie Newman, COE | Subject(s): Bob Welsh | June 19, 2013 | Jan. 21, 2014 |

Allegation(s):

Complainant alleges that subject Bob Welsh (Welsh), a commissioner for the City of South Miami (South Miami) together with subject Philip Stoddard, Mayor of South Miami, created and distributed a flyer in the name of the City of South Miami to South Miami residents without prior approval of the City Commission, in violation of Sec. 8A-4.1. of the South Miami Conflict of Interest and Code of Ethics Ordinance.

The allegation also implicates a possible violation of Florida Statute 106.071 (2) because Welsh failed to identify himself in the flyer as the funding source for a political advertisement.

Relevant Ordinances:

Sec. 8A-4.1. of the South Miami Conflict of Interest and Code of Ethics Ordinance:

Prohibited commission actions.

(1) Every person included in the terms defined in [subsection 8A-1](b)(1) "commission members" is prohibited from acting as a representative of the commission without the consent of the majority other than for the purpose of presiding over ceremonial functions or civic functions as an invited guest.

(2) Every person included in the terms defined in [subsection 8A-1](b)(1) "commission members" is prohibited from acting independently and in his or her official capacity, as a commission member, in making or publishing statements or statistics as substantiated fact without review and approval of city staff; reviewed and approval by an independent consultant hired by the commission; or without an endorsement from the majority of the commission.

The COE has authority to enforce Sec. 8A of the South Miami code.

Florida Statute 106.071 (2): *Any political advertisement paid for by an independent expenditure shall prominently state "Paid political advertisement paid for by (Name and address of person paying for advertisement) independently of any (candidate or committee)."*

Investigation:

Interviews

South Miami Mayor Philip Stoddard (Stoddard),

Tuesday, Oct. 29, 2013, 3 p.m., at his office at Florida International University's Modesto Maidique Campus in western Miami-Dade.

Stoddard said that in April he chose to create a flyer to publicize certain city initiatives, and to pay for its printing and distribution out of his mayor's discretionary fund. The text filled one side of a standard sheet of paper, and was to go out with nothing on the back. He said he asked the city manager, Steven Alexander (Alexander), if he wanted to add anything. He said Alexander suggested putting the city seal on the document, but declined to add anything to the flyer's content.

South Miami Commissioner Welsh offered to pick up and distribute the flyer himself, manually by bicycle, as he has become renowned throughout the city for doing, to the city's approximately 3,500 homes. Stoddard said the arrangement was that Welsh would pick up the flyers and pay for them, then deliver the receipt to Stoddard and get repaid. Stoddard said Welsh never delivered the receipt to him, and so presumes that Welsh bore the cost himself.

Only afterward, Stoddard said, did he discover that the flyer went out with Welsh's text on the reverse side.

"I began getting e-mails complimenting me on the flyer but also asking me about things I

hadn't written. Bob had not given me the receipt (from the printer). I [began to wonder] if Bob stuck something on the back. Someone sent me a scan [of it]," Stoddard said.

A follow-up conversation was held Nov. 20, 2013, at 2 p.m. by telephone.

In response to my e-mail, Stoddard called, to explain the sequence of events regarding the flyer in more detail.

He said the idea for distributing a flyer actually came from Welsh. Welsh told him he had some time and was willing to distribute a flyer, so if he, Stoddard, had anything to distribute, he, Welsh, could do it.

Stoddard said he then constructed his flyer message, sent it to Alexander, who declined to add anything to it. So Stoddard sends the flyer to Station America, a printer he knows has good prices.

"I told Bob he could pick it up, and to give me the receipt and I'll reimburse you. We have a discretionary account and some communication funds."

"Bob said, you have a blank side, why don't you add something else? Ultimately, I didn't do that."

Stoddard said he didn't remember the order size but figured it to be around 3,000 copies.

Asked about the apparently routine conversations with Welsh, Stoddard said the Sunshine Law prohibits commissioners from discussing any matter than has the potential of coming before the board, but that doesn't preclude conversations on past issues or on other matters. When it was pointed out that the flyer eventually included matters that were likely to come before the city commission, Stoddard said, "I had no idea he was doing that. I was rather mystified [by calls he was getting] about things I hadn't written about. I would have preferred that he [Welsh] had asked me [before adding his material]. If he had asked me I would have told him to use a separate sheet."

South Miami Commissioner Bob Welsh,

Friday, Nov. 15, 2013, 3 p.m., at South Miami City Hall.

Welsh said that the city [he used this term rather than naming Stoddard specifically] had opted to put out a flyer in April.

“The city was going to put out a flyer.... Typed it up and sent it to Station America.... The mayor was going to pay for it out of discretionary funds. I opposed him on the landscaping ordinance [the second issue Welsh addresses on his side of the flyer]. I couldn’t tell him about that or the branding or the street signs.” The landscaping issue (a proposed noise ordinance aimed at commercial leaf blowers), branding issue (a proposal to design a new city logo) and street signs issue (a proposal to design and buy new street signs) were all active city issues on which Welsh offered his opinion on his side of the flyer.

Welsh stated that he added his own message to the back of Stoddard’s flyer without Stoddard knowing. “I blindsided him, because I couldn’t tell him that I was going to put something on it that all of us were going to vote on. I used the flyer to kick the Dolphins in the knees and kick FPL in the knees.”

“I was going to pass it out [manually to the town’s residents]. He [Stoddard] had Mr. Alexander approve it and I was going to pass it out.”

“I paid 3 cents [per page] for my side. I wound up paying for the city side, too. I put political stuff on my side. I could either have paid 3 cents for a new sheet and collated 3,000 copies for 50 bucks [creating two separate pages]. Rather than do that, I’d rather save paper.”

Welsh is widely known as a defender of the environment, and frequently digressed during the interview to talk in favor of various energy-saving strategies.

Asked how recipients would know that he and Stoddard were responsible only for their respective sides of the flyer, Welsh said the different typesets and fonts should have helped distinguish the authors from each other. He was unable to offer a more persuasive rejoinder to the question.

Welsh’s page lacked the state-required political disclaimer despite its direct commentary on issues that would become before the commission, and, in the case of the proposed Dolphin stadium retrofit, county voters. On this point, Welsh said that the issue became moot when the election referendum was canceled. “By the time this went to the print shop, they had already withdrawn the election, for one thing. It was a moot issue.” He called the printer during the interview with this investigator. The person he spoke with, Steven, estimated that the flyer was picked up around April 30. Welsh added – perhaps being aware of the relevant dates – that the flyer “might have been picked up a couple of days later.” [The actual vote was scheduled for May 14. It was canceled May 3 when the Legislature decided not to grant the funding plan sought by the team. Early voting for the referendum began April 29, and more than 12,000 people had already cast absentee ballots by the time the vote was called off.]

Steven Alexander,

City of South Miami City Manager, Tuesday, Nov. 19, 2013, 2:15 p.m., by telephone.

Alexander was South Miami's acting city manager at the time this flyer was published and distributed in late April 2013. [He is now the permanent city manager]. This investigator called him to reconfirm notes taken during a June conversation with Alexander on this matter which appear to contradict testimony from Stoddard. According to the investigator's notes, Alexander in June said of the April flyer, "Who paid? I don't know. The mayor made some comments (about it) on the dais, I don't know. This [flyer] was not done in any way shape or form through me, or as far as I can determine, any of my staff."

During the present conversation, Alexander said that note did not fully reflect what happened. Alexander said "The mayor sent a version of the document [that Stoddard intended to send out], and I said, 'It looks good to me. If it is a city document, put the city seal on it.'"

Subsequently, Alexander said, the text of the front side of the flyer changed. Alexander said that the changes made the document sound less like a civic information bulletin, and more like a political promotional piece, and that retrospectively he would not have approved the revised version going out with the city's seal. He said he certainly would not have approved the flyer were he made aware of what Welsh ultimately put on the reverse side.

Alexander said, "The front side [of the document] changed. I did approve an iteration of the mayor's copy. After I said that, [I said]. 'Then put the seal on it.' Then it got changed, it got added onto. And then it got changed [again] with Bob [Welsh]'s information."

"That document that went out, I did not approve."

Alexander said that City Attorney Thomas Pepe told him in conversation that it was his opinion that the city manager has authority to approve use of the seal, but not the mayor alone. Alexander said there is some question as to whether distribution of a flyer might be classified as a "ceremonial function" – which would give the mayor authority to authorize use of the city seal.

Document/Audio/Video Review:**Exhibits**

Newman provided this investigator with a copy of the April flyer. Welsh later supplied a two-sided original copy of the April flyer during his Nov. 15 interview. Alexander sent an e-mail with the original draft of the flyer sent to him by Stoddard. The differences between the two will be noted after the following description of the flyer that was delivered to residents.

The front side

The April flyer consisted of a single page printed on both sides. On the front side was a message above the name of "Philip Stoddard, Mayor" and bearing the seal of the City of South

Miami. Addressed to “Dear Neighbor,” the flyer offers “three ways you can improve your home and your community.” The three ways are to (1) ask the city to plant a tree in the easement in front of the resident’s house. Residents who desire a tree planted in their yard are referred to Welsh, “who provides and plants oaks as a community service.” (2) A pitch for the Property Assessed Clean Energy (PACE) program, which offers financing for the retrofitting of older properties with energy-saving improvements. South Miami is one of seven Miami-Dade cities who have formed a “Green Corridor” to promote the program, which utilizes for-profit contractors to do the actual work. (3) Volunteer for community service, a general appeal for civic involvement.

On the reverse side of the flyer is a tract written by Welsh. However, the only place Welsh’s name appears on the page is as a signature beneath a cartoon, suggesting that Welsh either drew or co-authored it. The cartoon depicts the Miami Marlins and Miami Dolphins mascots being carried as though royalty in a litter borne by struggling common workers. Above the cartoon was written, “Vote No on May 14.” A county-wide referendum on a multimillion dollar package to retrofit the Dolphins’ Sun Life Stadium was scheduled for May 14, but was canceled May 3 when the state Legislature failed to vote on a measure that would raise the tourist tax to create a partial funding source for the stadium retrofit plan. The referendum was the only item on the ballot for that day’s election.

The text of the reverse-side page covered a number of items: (1) A solicitation of resident input regarding the city’s consideration of a plan to spend \$150,000 “to design a new logo and buy new street signs.” The item asks, “Please let us on the Commission know if you are in favor of this.” This wording creates an impression that the entire commission is seeking this input, not Welsh alone. (2) A similar solicitation asking for resident input regarding an addition to the city’s landscape ordinance that would restrict the commercial use of powered leaf blowers. Again, the text asks residents to “let us on the commission know your feelings on this matter,” implying again that the commission as a whole was seeking this input. The e-mail addresses of all five commissioners were included.

The rest of the page was devoted to a review and commentary on the issue of a proposal by Florida Power and Light to run new high-voltage transmission lines overhead through the city. This issue was presented in partisan fashion: “This is your last chance to keep FPL transmission lines out of S. Miami” was the heading. It continues, “We would rather see the lines underground or shielded” again implying that the entire commission held this position.

The differences between Stoddard’s final version of the front side of the flyer and the version Alexander described as the first version are not as dramatic as Alexander purports. In section (1), the final version adds contact information for Welsh for residents who sought to have a tree planted in their yard (as opposed to the city easement); the original lacks this. The later version says that Welsh “provides and plants oaks as a community service.”

Section (2) differs mostly in that Stoddard adds “lower[ing] your insurance rates” to the list of possible benefits of PACE financing.

Section (3) differs mostly with the addition of the line, “If you’ve read down this far, you qualify [as someone who could make a contribution to the city].”

Finally, at the bottom of the page, the later version includes the quotation, “Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.” The earlier version lacks the quote. It is not attributed to its reputed speaker, Margaret Mead.

In e-mail responses received December 2, 2013, both Stoddard and Welsh said that Stoddard alone made the changes without any prompting from or contact with Welsh.

Analysis

The three-member ideological majority of the South Miami City Commission (Stoddard, Welsh and Walter Harris) has been cavalier, and often sloppy, in its practices regarding printed communications with city residents. While the three might be applauded on the one hand for their efforts to be frugal – including utilizing a standing offer from Welsh to distribute flyers to roughly 3,500 residences personally via bicycle – these attempts to cut corners to save money have resulted in a blurring of clear lines of political demarcation that surely has created confusion for city residents.

The April flyer is problematic on several counts. First, the tract on the reverse side of the flyer is explicitly partisan in nature on two issues, the Dolphin/Sun Life stadium referendum and the FPL transmission lines plan. The state requirement that independent financiers of election-related media identify themselves is absent from the politically oriented reverse side of the flyer.

Second, the presence of the city seal, together with Welsh’s failure to identify himself as the author of the flyer’s reverse side, creates a clear appearance that what is, in fact, his personal opinion, is the official stance of the City Commission, when the Commission made no such declaration (which is not to say that Welsh’s views *might* represent those of the Commission majority). Welsh’s references to “us” on the reverse side and the inclusion of all five commissioners’ city e-mail addresses further reinforce this misperception. The presence of the city seal, which would not have violated the city’s code with respect to Stoddard’s material alone, seems to put the city’s official imprimatur on Welsh’s unsigned and clearly partisan comments.

Third, because Welsh’s authorship of the reverse side of the flyer was not clearly identified, recipients could have been misled to believe that Stoddard either wrote or endorsed both sides of the flyer, since he is clearly identified as the author of the flyer’s front side.

Finally, the flyer creates the inescapable impression that Stoddard and Welsh colluded in its production, even though both say that Stoddard did not know of Welsh’s plan to add his material to Stoddard’s flyer. The reverse side addresses three issues that could be expected to come before the City Commission, which, when combined with the mayor’s message on the front side, gives an appearance of two commissioners collaborating on a message to residents about such issues. Even if the sequence of events presented is correct – that Welsh added his

material without notifying Stoddard beforehand – recipients of the flyer could easily conclude otherwise. This creates at least the appearance that the Sunshine Law is not respected among South Miami elected officials.

It should be noted that neither Welsh nor Stoddard took ownership of having initiated the idea for the flyer. Stoddard said Welsh approached him, while Welsh said “the city” planned to distribute a flyer.

Conclusion(s):

The original flyer that Stoddard intended to print and distribute would not have presented an ethical dilemma on its own. The city code does appear to give authority for the use of the city seal on such a document with the approval either of the full City Commission or the city manager; in this case, it was the latter. However, Stoddard’s alteration of the document after City Manager Alexander’s approval could serve to negate the purpose of the ordinance, especially given that Alexander himself said he might not have approved the final version.

The more serious problems with this flyer were created when Welsh took it upon himself to add his own message to the back of the flyer. The problems are many: Welsh’s side of the document was not signed by him, creating either of two false impressions: That Stoddard was the author (or at least sanctioned the message), or that the text was approved by the full City Commission. The wording of the Welsh side of the flyer exacerbated the perception that the full City Commission had endorsed the message.

Welsh’s addition made the presence of the city seal much more incendiary, as it gave the appearance of official city approval to the partisan opinions Welsh states on municipal and countywide issues.

Although his side of the flyer was unsigned, Welsh has not denied being its author. Thus it created an impression that two commissioners colluded in the creation of a document that overtly addresses matters that could come before the City Commission in violation of the Sunshine Law. This impression remains even though the explanation given by both commissioners for how the flyer came to be without direct collusion is plausible.

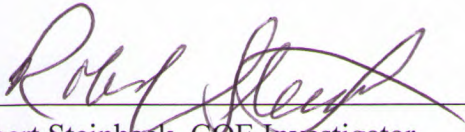
By addressing a referendum scheduled to come before county voters, Welsh’s side of the flyer may have violated state law by failing to identify the source of the political advertisement and its connection (or lack of same) with any political committees. At the time of the flyer’s publication, early voting and collection of absentee ballots on the referendum had already begun, so the problem was not mooted by the eventual cancellation of the referendum.

The flyer seems to have created a noteworthy if not substantial amount of confusion among South Miami residents about the city’s official stance on certain issues, and about who among their City Commissioners was endorsing or promoting which issues. The recognition that the motives behind the process might have been innocent – i.e., to save money by combining two separate flyers onto one sheet of paper, or to save the city money by utilizing a commissioner’s voluntary hand-delivery service – does not justify the blurring of clear lines of

demarcation where political matters are concerned, lines that exist precisely to prevent citizen confusion regarding such matters.

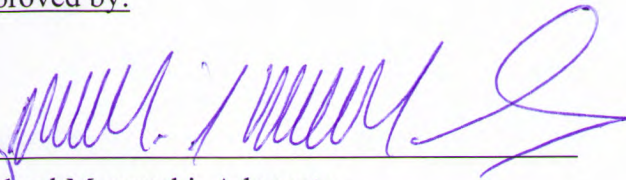
The creation and distribution of this particular flyer is not unique for this particular cast of city officials in South Miami and is likely to occur again. There is no question that elected officials have a right, indeed, a responsibility to keep their constituents informed of current events and issues. In fact, the Mayor has a discretionary fund that he can utilize to pay for his informational flyers. In this day and age, perhaps using the City's website or sending out mass e-mails may be more efficient and frugal than printing flyers.

This investigation, as noted above, places the cause of the confusion and appearances of impropriety squarely on Commissioner Welsh. While there is insufficient evidence to pursue any ethics violation or Sunshine law violation against him, it is recommended that Commissioner Welsh discontinue his practice of "piggybacking" on flyers issued by other elected officials. Commissioner Welsh should also familiarize himself with Florida Statute 106.071 and take care that he does not violate elections laws. It is suggested that, in the future, Commissioner Welsh identify his flyers and messages as distinctly "his" so as to avoid any possibility that those views be attributed to the "City" as a whole.

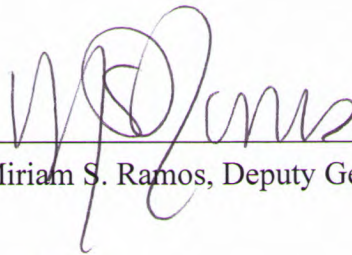


Robert Steinback, COE Investigator

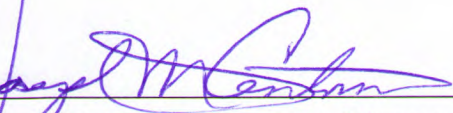
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Date