

Miami-Dade Commission on Ethics & Public Trust

Report of Inquiry

Investigator: Sylvia Batista

Case No: K14-079 (formerly PI 14-032)	Case Name: Sweetwater Commission	Date Open:	CASE CLOSED Date: <u>1/14/15</u>
Complainant(s): Michael Rosenberg Rita Schwartz	Subject(s): Sweetwater Commissioners	7/14/14	

Allegation(s):

On 7/12/14 Michael Rosenberg (“Rosenberg”) and Rita Schwartz (“Schwartz”) of the Pets’ Trust provided information to the COE regarding their appearance before the City of Sweetwater Commission at its 05/05/14 meeting. Rosenberg and Schwartz explained that they had applied for the approval of a resolution establishing the Pets’ Trust in the City of Sweetwater (the City). The Commission initially approved it, but rescinded it after allegedly receiving a telephone call from Miami-Dade County Commissioner Jose “Pepe” Diaz (Diaz) during a break in the Commission meeting. Rosenberg and Schwartz provided an excerpt of the meeting which shows that City Commissioner Jose Bergouignan (“Bergouignan”) returned from the break and announced that he had received a telephone call from Diaz telling him that his position was misrepresented by the people from Pets’ Trust, and that based on that information he would like to rescind the vote approving the resolution that was made minutes earlier. As Bergouignan contemplated his motion, City Commissioner Manuel Duasso (“Duasso”) is heard in the background seconding the motion, which gave the appearance that there had been discussion about the resolution amongst the commissioners during the break.

Rosenberg and Schwartz highlight certain questions which arise from the incident, the principal one being whether a Sunshine law violation occurred during the break, as one could infer from Duasso’s premature seconding of a motion.

Relevant Law:

Florida Statutes, Section 286.011 – Florida Sunshine Law

Investigation:

Document/Audio/Video Review:

- A review of the excerpt of the 5/5/14 meeting indicates that the approval of the Pets' Trust resolution was rescinded as a result of a telephone call made to Bergouignan by Diaz wherein Diaz informed Bergouignan that the Pets' Trust supporters had misrepresented and lied about what Diaz had said. The vote was rescinded and the item tabled until the June regular council meeting.
- At the conclusion of the 6/2/14 meeting, the City Commission passed and adopted a resolution honoring the will of the electorate by establishing pets' programs in the City. Any mention of the Pets' Trust was removed from the rescinded resolution before it was unanimously approved.
- Agenda Item No. 11(A)(6) 7-17-12 - resolution placing a non-binding straw ballot question on the general election ballot for the purpose of submitting to Miami-Dade electors whether they support the BCC increasing the Countywide general fund millage to fund improved animal services programs in the County. The exact question as it appeared on the straw ballot was as follows:

Would you be in favor of the County Commission increasing the countywide general fund millage by 0.1079 mills and applying the additional ad valorem tax revenues generated thereby to fund improved animal services, including:

- Decreasing the killing of adoptable dogs and cats (currently approximately 15,000 annually);
- Reducing stray cat populations (currently approximately 400,000 cats); and
- Funding free and low-cost spay/neuter programs, low-cost veterinary care programs, and responsible pet ownership educational programs?

There is no mention of the Pets' Trust on the resolution approving the ballot question or on the ballot question itself.

- A review of the minutes from the 5/5/14 regular City Commission meeting reflects that the Pets' Trust resolution was amended and adopted unanimously as amended. Later in the meeting, Bergouignan made a motion to reconsider the resolution which was seconded by Duasso. The motion carried by a vote of 6-1, Commissioner Orlando Lopez ("Lopez") casting the dissenting vote.
- A review of the minutes from the 6/2/14 regular commission meeting reflects that the

resolution of the Pets' Trust was amended and unanimously adopted at this meeting. The amendment to the resolution was to remove the name "Pets' Trust" and replace it with the words "pets' programs."

- A review of the recorded portion of the 5/5/14 commission meeting seconds prior to reconvening reveals a brief exchange between Duasso and Bergouignan, which may have been in reference to the new motion subsequently made.

Interviews(s):

7/25/14 – Commissioner Jose “Pepe” Diaz, District 12 -

Diaz was advised as to the reason for the interview. Diaz said that Pets' Trust representatives came before the City Commission seeking a resolution sponsored by Commissioner Lopez. Diaz said that the first time the Pets' Trust item came for a vote he called Bergouignan and told him that the people from Pets' Trust had lied, during their presentation about something that he had previously told them.

Diaz said that he was at home watching the meeting on television when he heard the Pets' Trust representative making their presentation. Diaz said that he tried to contact Bergouignan, who is his brother-in-law, to tell him that the presenters were misrepresenting and basically lying about what he had said to them. Diaz said he was not able to speak to Bergouignan before the Commission unanimously approved the resolution. When Bergouignan saw that Diaz was trying to contact him, he called for a break and spoke to him. Diaz said he told Bergouignan that the resolution cannot pass as is, and that he had been misrepresented. Diaz said that the Commission voted to bring the resolution back up for reconsideration at the June meeting where it passed with changes.

Diaz claimed that Rosenberg misrepresents all efforts made by the BCC regarding the animals. Diaz said that the animal referendum was sponsored by County Commissioner Sally Heyman and co-sponsored by County Commissioner Lynda Bell. Diaz explained that nowhere on the ballot language is there any mention of the Pets' Trust. Diaz said that he supports any effort to make Miami-Dade County Animal Services Department (ASD) a no-kill zone, but the effort should be made by the people who have been involved in it all along. Rosenberg and the Pets' Trust were not.

Diaz said that Rosenberg is the same person who fought for legislation to void abnormally high water bills received by customers of MDWASD. Rosenberg was constantly ignored by the BCC, but he continued until the legislation passed. Diaz said that he thought there was an altruistic purpose to Rosenberg's efforts, but then Rosenberg showed them his business card revealing that he had been hired by a water meter company and then pushed for the county to begin using the meters he was selling. Diaz said that Rosenberg became involved in the animal issue after he went to ASD and saw the killing of animals. The Pets' Trust then became his new project.

7/30/14 – Commissioner Prisca Barreto –

City Commissioner Barreto (“Barreto”) recalls the meeting where Bergouignan mentioned having received a phone call from Diaz, but she did not hear their conversation. Barreto recalls that Bergouignan asked that their previous vote be rescinded, and they did so. Barreto recalls that the Commission did not discuss the phone call or the issue amongst themselves during the break or in between the two votes taken that night.

7/30/14 – Commissioner Orlando Lopez (Vice President) –

Lopez said that he recalls the subject meeting. Lopez advised that he sponsored both resolutions regarding pets. The first resolution did not pass, but the amended resolution passed at the next meeting. At the meeting in question, they were on a break when the call from Diaz came in to Bergouignan. Lopez said that he did not overhear the conversation. Lopez said that during the break he went to the restroom and walked back to the commission chambers as the meeting resumed. Bergouignan said that Diaz had called him during the break and said that the Pets’ Trust people had lied to them, and that they would rescind the resolution that they had just passed. Bergouignan made a motion to bring the item back at the next meeting. Everyone on the Commission voted for it except him. Lopez did not discuss the item with anyone on the Commission in between the time the two votes were taken that night.

7/30/14 – Commissioner Catalino Rodriguez -

City Commissioner Catalino Rodriguez (“Rodriguez”) does not remember Bergouignan declaring, during a recent Commissioner meeting, that he had received a call from Diaz and wanted to rescind a vote.

7/30/14 – Commissioner Isolina Marono –

City Commissioner Isolina Maroño (“Maroño”) said that at the meeting in question, which she thinks was in May, they all voted to approve the Pets’ Trust resolution. She recalls that they took a break. When they returned from the break, Bergouignan announced that he had received a phone call from Diaz regarding the Pets’ Trust, and that he would like to rescind the vote. Maroño said that she stayed in the Commission chambers during the break and therefore did not overhear the conversation between Diaz and Bergouignan. She did not discuss the issue with any of the other members of the Commission in between the time the two votes were taken on the Pets’ Trust item that night.

7/31/14 – Commissioner Manuel Duasso –

Duasso said that he remembers the meeting in question. Duasso described how Bergouignan returned from the break and made the announcement that Diaz called and told him something about the Pets’ Trust. Bergouignan also said that they would have to rescind the vote and started to make a motion, so he seconded it. Duasso explained that he did not need to hear the rest of Bergouignan’s motion because he knew Bergouignan’s intention was to rescind the vote based on what he had just said. Duasso did not overhear the conversation between Bergouignan and Diaz and did not discuss the issue with any of the other members of the

commission at any time.

7/31/14 – Commission President/Vice Mayor Jose A. Bergouignan –

Bergouignan said that he recalls the meeting and his comments to the Commission after the break. Bergouignan explained that after the vote on the Pets' Trust resolution, they took a break. He went to the break room and called Diaz who had called him while he was in the meeting. He was alone in the break-room and did not discuss what was told to him by Diaz with any of the other commissioners. The commissioners found out about his intent to rescind the vote when he made the announcement at the meeting.

Bergouignan explained that as far as he knows Diaz has always been pro-animals, but he did not appreciate the misinformation being put out by the Pets' Trust people. At the presentation, the Pets' Trust representatives misrepresented the fact that Miami-Dade voters had voted on a non-binding straw ballot question which is similar to an opinion poll. Rosenberg contacted him after the May meeting and he was adamant that he wanted the resolution passed. He went to Tallahassee and no one backed him. If the resolution would have passed in its original form, Pets' Trust would have control of the money and there would be no control over how the money is spent. In the end, it was a lady who was with the Pets' Trust group who suggested that they amend the resolution giving funding to pets' programs instead of to Pets' Trust only.

07/31/14 – Commissioner Jose Guerra -

City Commissioner Jose Guerra ("Guerra") said that he recalls the subject meeting and what happened with the Pets' Trust resolution. Guerra said that he recalls that they took a break and he saw Bergouignan step out of chambers into the hallway and later he saw him come back in. Guerra said that he did not leave the chambers during the break. He found out about Diaz' telephone call when Bergouignan announced it upon his return from the break. Guerra said that he did not witness the conversation between Bergouignan and Diaz. Guerra said that he did not discuss the item with any of the other members of the commission at any time.

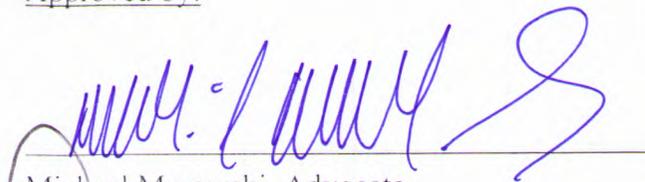
Conclusion:

In view of the information and statements obtained in this investigation, the COE had several conversations with the State Attorney's office about whether they wanted to pursue a Sunshine Law violation. The SAO expressed no desire to pursue the matter. For that reason, no further action will be taken by the COE on this matter.

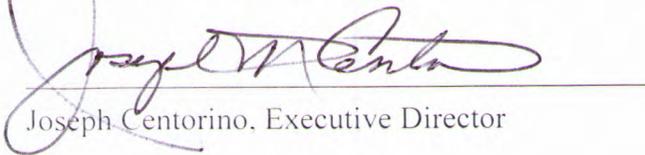


Sylvio Batista, COE Investigator

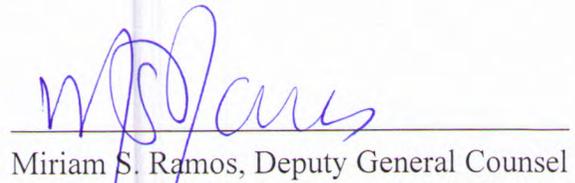
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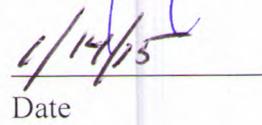
Michael Murawski, Advocate



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Date