



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Larry Lebowitz

Case: K14-058	Case Name: Ultra Tickets	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Self-Generated	Subject(s): Multiple City of Miami officials and employees, appointed members of the Bayfront Park Management Trust	6/24/2014	6/24/2014
		CASE	CLOSED
		Date: <u>5/29/18</u>	

Allegation(s):

That City of Miami elected officials, employees and appointees to a municipal agency were accepting free weekend VIP passes worth hundreds of dollars to a popular annual Electronic Dance Music festival a/k/a Ultra Music Festival in a City of Miami park.

Relevant Law:

Section 2-11.1 Miami-Dade County Conflict of Interest and Code of Ethics Ordinances

(g) **Exploitation of official position prohibited.** No elected official or municipal employee shall use or attempt to use his or her official position to secure special privileges for himself or herself or others except as may be specifically permitted by other ordinances.

(e) **Gifts.**

(3) **Prohibitions.** An elected official, appointee or municipal employee shall neither solicit nor demand any gift.

(4) **Disclosure.** Any elected official, appointee or municipal employee shall disclose ... any gift from any one person or entity, having a value in excess of one hundred dollars (\$100.00).

City of Miami Charter, Section 4 – Form of government; nomination and election

Subsection (c) *Qualifications of mayor and city commission; mayor, city commissioners, and other officers and employees not to be interested in contracts, etc.; franks, free tickets, passes or service.*

“No mayor, city commissioner, or other officer or employee of said city shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor. Such prohibition of free service shall not apply to police or fire personnel in uniform or wearing their official badges, where same is provided by ordinance.”

City of Miami Code, Article V, Conflicts of Interest.

Section 2-613: Accepting Gifts from persons contracting with city.

Every officer, official or employee of the city, including every member of any Board, commission or agency of the city is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the city.

Investigation:

Document(s) Reviewed:

The contract between Bayfront Park Management Trust (BPMT or the Trust) and Event Entertainment Group, Inc. (EEG), covering shows for 2014 through 2018.

EEG was required to pay a \$2 per-ticket surcharge in addition to base rent and other expenses for all tickets that cost \$30 or more – a typical Ultra one-day ticket cost \$149.95 in 2014. The contract also laid out that the promoters were allowed to give away up to 1,040 tickets per each day event that were not subject to the \$2-per-ticket surcharge (including the 40 daily VIP tickets set aside for the Trust and 1,000 for the promoter).

In 2014, the promoters reported a sell-out – 47,672 tickets sold for each of the three days. They also reported an additional 1,252 comp tickets given away above the 1,040 threshold on Friday, 1,825 comp tickets above the threshold on Saturday and 1,897 comp tickets on Sunday. So, the promoters gave 120 tickets to the Trust for the three-day weekend, and 2,252 tickets on Friday, 2,825 tickets on Saturday and 2,897 tickets on Sunday to persons unknown.

It is unclear whether any of those 7,974 free tickets handed out by the promoters for 2014 were given to public officials, board members or municipal employees – anywhere in Miami-Dade County, not just in the City of Miami --- who are subject to state, county or local gift-disclosure or other statutes and ordinances.

Lawyers representing EEG thwarted previous attempts by the City of Miami Auditor General to force the promoters to disclose all of the persons who sought or received free Ultra tickets. Moreover, based upon the information at hand, it was unlikely that the information from EEG would specifically identify City of Miami employees or other government employees. This investigator was instructed by the Advocate to focus the inquiry on the 40 free tickets contractually provided to BPMT.

Document(s):

Commission on Ethics and Public Trust report: "Guidelines and recommendations regarding "public benefit" clauses in certain government contracts." See also: "Addendum to Guidelines and Recommendations Regarding 'Public Benefit' Clauses in Certain Government Contracts"

Document(s):

COE General Letter of Instruction to the City of Miami, April 2012, following the adjudication of C12-07 (*Crespo v. City of Miami officials, et. al*). The COE ordered, and the City agreed to accept, a General Letter of Instruction that was supposed to be used and adhered to by the City in developing and revising its policy concerning the use, distribution and reporting of tickets and other benefits obtained by the City through contractual agreements with certain City-owned venues, including Bayfront Park.

Document(s):

City of Miami, Legistar Masterfile Item 12-00657. This was the proposed ticket-policy discussion promoted by the City Manager's office in the wake of the COE Letter of Instruction. The item never received a hearing. On June 14, 2012, Commissioners voted to defer the item to the June 28, 2012 meeting. The item was withdrawn by the administration prior to the June 28, 2012, meeting and never acted upon again.

Document(s):

Responses to COE public records request by Bayfront Park Management Trust regarding tickets provided to individuals for Ultra in 2012, 2013 and 2014; the Trust's contract with Ultra promoters EEG; accounting records provided to BPMT (and the city Auditor General) reconciling the number of free tickets given away by the promoter that were and were not subject to the city's \$2/per ticket surcharge.

Document(s):

Responses to COE public-records requests by City Clerk Todd Hannon regarding financial gift disclosures submitted by: then City Attorney Julie Bru; then Assistant City Attorneys Maria Chiaro and Veronica (Diaz) Xiques; Kechi Okpala, a vendor working for the Virginia Key Beach Park Trust; and seven current and former members of BPMT: Alex Cardenas, Pedro Diaz, Ralph Duharte, Jeanie Hernandez, Michael Joseph Jackson, Fred Joseph, Marie Loussaint, and Jessi Manzano. All of the individuals were named as recipients of free Ultra tickets from the BPMT allotments.

Document(s):

Miami-Dade State Attorney's Office closeout memo dated Jan. 14, 2015. Based on an anonymous tip in the fall of 2014, COE investigators discovered a YouTube video of a March 2013 Ultra performance by popular Swedish DJ Hardwell. The anonymous source said that two persons appearing on the video, at 4:05 to 4:09 of the performance, resembled two former assistant city attorneys, Veronica Diaz and Kira Grossman. Diaz, whose city legal duties included coverage of the BPMT, helped to negotiate the last version of the Ultra contract. She was elected to the Circuit Court bench in August 2014. Grossman left the City years ago for private practice and is a member in good standing of the Florida Bar.

A copy of the 56-plus minute video was downloaded to a disc for the file, but it is 1.24 gigabytes and hard to duplicate. The video remains online at <https://www.youtube.com/watch?v=jXOgYxUf6Ts>. It is on the "Hardwell" channel and titled "Hardwell Live at Ultra Music Festival 2013 – FULL HD UMF.TV" The paper file includes a handful of freeze-framed photos grabbed from the performance as well as photographs of Ms. Diaz and Ms. Grossman that were available via online sources.

Document(s):

City of Miami Independent Auditor General, Review No. 14-019, dated July 31, 2014: "Review of the Bayfront Park Management Trust Use Agreement with Event Entertainment Group, Inc. (Ultra Music Festival)."

Document(s):

COE investigator notes summarizing ticket pricing for the Ultra Music Festival for 2012, 2013, 2014 and 2015. The pricing was relevant to determining the actual value of one or two free VIP passes for the tickets provided to BPMT members.

The issue was complicated a bit by the festival expanding from a three-day, one-weekend event in 2012 to a six-day, two-weekend event in 2013. It reverted back to a three-day, one-weekend format for 2014 and thereafter.

Whether the festival covered one or two weekends, face value for all of the VIP passes exceeded the \$100 threshold for gift disclosure by elected officials, board appointees and municipal employees.

Conclusion:

It should be noted that the City Commission has repeatedly declined to adopt clear, reasonable, good-government standards on the use of free tickets to sporting events, concerts at other government-owned facilities. The City Attorney's Office, on the other hand, has consulted with COE Staff regarding the gift provisions under the County Ethics Ordinance and COE ticket policy, in connection with related issues involving City officials during the past several years.

The relevant section of the Charter states that anyone taking a free "ticket" is committing a misdemeanor. COE, however, can only refer criminal misdemeanors to the Miami-Dade State Attorney's Office, or other agencies that prosecute state (and federal) statutes.

While the plain language adopted in the Charter appears to be straightforward in banning all employees and elected officials from accepting any free "tickets", the City Attorney's office has chosen to interpret this law very narrowly. A 2014 opinion by Assistant City Attorney George Wysong declared that Charter provision archaic. According to Mr. Wysong, the Charter provision was written to address police and firefighters who might be jumping aboard trolleys, jitneys or other conveyances without paying the fare so they could respond to a public emergency, fire or crime scene.

COE has historically disagreed with Mr. Wysong's interpretation of the City Charter, noting that free "tickets" are among many prohibited items listed in the first half of the paragraph and an entire separate sentence follows that addresses the free rides for police and fire personnel. The COE, however, has no jurisdiction to authoritatively interpret or enforce the Charter provision.

In late 2014, COE asked the Miami-Dade County State Attorney's Office to interpret the law. As Assistant State Attorney Johnette Hardiman noted in her January 2015 close-out memo, the opinion authored by Mr. Wysong, even if incorrect, provides a ready defense for anyone who might be charged with intentionally taking free tickets in violation of the provision.

As the backup materials to this file indicate, the City law office may have had an interest in finding a path around the Charter language. Former City Attorney Julie Bru and several Assistant City Attorneys with little to no direct interaction with the Trust were among the persons who asked for and received free Ultra tickets in the years prior to the policy change implemented in 2014 by former BPMT Executive Director Timothy Schmand. [As the backup materials also note, former City Attorney Bru was cognizant of appearances: She asked for and received one free VIP pass for the 2012 edition of Ultra from the Trust, but paid face-value for a second VIP pass for her then-girlfriend (now wife), who was a City of Miami police officer at the time.]

We also reviewed Section 2-613 of the City's Code entitled "**Accepting gifts, etc., from persons contracting, etc., with city.**" This section of the Code states that "Every officer, official or employee of the city, including every member of any board, commission or agency of the city, is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, *gift*, money or *anything of value whatsoever*, except where given for the use and benefit of the city."

We have previously clarified in our ticket policy that tickets received by a government agency under a "public benefits" clause are for the benefit of the "public" not government employees and elected officials for their personal use. We have carved out an exception, as with the members of the BPMT, where BPMT officials attend Ultra (or other events) for a legitimate, city business reason. In those limited circumstances, a BPMT member has been permitted to utilize an Ultra ticket. This exception, however, does not permit other city officials or employees, with no legitimate public purpose to attend the Ultra event, to accept free tickets. Section 2-613 of the City's Code expressly prohibits the acceptance of such tickets from "any person, company, firm or corporation to which any purchase order or contract is or might be awarded." Section 2-613 would also prohibit, acceptance of such free tickets by a City official or employee who does not use but re-sells the ticket(s) for a profit. Anecdotal evidence gained during the course of this inquiry suggests that selling of tickets occurs with some frequency by City employees. In this case, however, there was no particularized evidence of specific individuals receiving complimentary tickets, which underscores the importance of our suggestion to the City that disclosure of information about any City employees or officials receiving tickets from the promotor be required pursuant to the contract.

While most of the attention of this inquiry was focused on the popular – and occasionally controversial – Ultra EDM festival, Ultra isn't the only event at Bayfront Park where elected officials, appointees and municipal employees might want to get "comp'd" tickets. The popular New Year's Eve televised concerts in the park featuring Pitbull and other performers have drawn large crowds for several years. A free VIP ticket to a New Year's Eve show featuring Pitbull is still a reportable gift under the County gift-disclosure ordinance.

Absent a criminal prosecution and a subsequent higher-court interpretation of the charter on appeal, there is one other path to clarify this issue. City officials could propose – and campaign for – a Charter amendment, that would clearly define whether, or under what circumstances, City officials and employees are permitted take free tickets to concerts, festivals and sporting events. If the Charter is archaic, as Assistant City Attorney Wysong has posited, perhaps it should be updated to meet the needs of a vibrant, 21st-Century city.

It should also be noted that the Miami City Commission has not acted on this issue. In 2012, COE settled a pending complaint on this topic. As part of that settlement, City administrators agreed to work with the COE toward adopting a "public benefit" ordinance similar to the one enacted by the City of

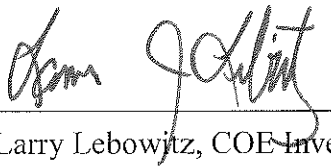
Miami Beach after COE's intervention.

The Miami City Manager brought forward an agenda item for discussion. It was deferred from one agenda in June 2012 and re-scheduled for another later that month. Before the next meeting, it was yanked from the agenda without discussion.

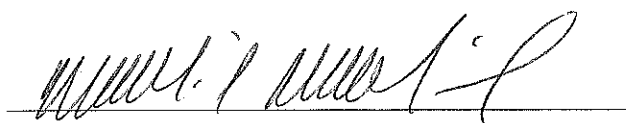
On a positive note, while the City Commission failed to act, the former executive director of the Bayfront Park Management Trust chose, on his own, to adopt the very same policies and "public benefit" standards that were adopted by the COE. From that point forward, the Trust refused to distribute more than one Ultra ticket – and tickets to other events at the park – to any Trust member or City staffers with a direct working relationship to the Trust such as an Assistant City Attorney negotiating contracts with a concert promoter.

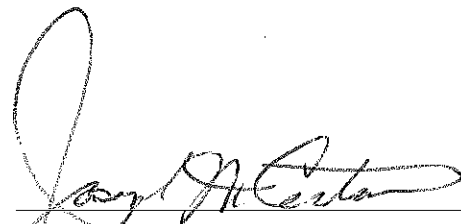
From that point forward, the Trust declined to distribute any more "plus-one" freebies to the spouses, friends and relatives of Trust members. The current Executive Director of the BPMT has continued the same "public-benefit" based standards to limit the free VIP passes to Ultra that are distributed from the Trust's allotment of 40 passes. Individuals receiving an additional pass (what has become known as a "plus-one") are required to report that additional pass as a gift from the Trust.

While the Trust has taken steps to limit the crush of people seeking to use the free VIP passes from the Trust's contractual allotment, Ultra promoters continue to provide hundreds of free tickets to various individuals for each show-day. After the 2018 festival, Ultra is currently between contracts. The City and BPMT have been strongly urged to include a provision in the next negotiated contract with the Ultra promoters requiring them to disclose the names of City officials and/or employees to whom they provide free tickets. The promoters have consistently provided numbers to account for per-ticket surcharges due the city, but have declined to disclose to the City Auditor the names of individuals receiving free Ultra passes. COE has continued to monitor the distribution of Ultra tickets to BPMT (see P118-10) any gift disclosures for "plus-one" tickets for the 2018 Ultra are due by the end of June 2018.

 5/29/2018
Larry Lebowitz, COE Investigator

Approved by:


Michael Murawski, Advocate

 5/29/18
Joseph Centorino, Executive Director