



Miami-Dade Commission on Ethics & Public Trust
Report of Inquiry

Investigator: Sylvia Batista

Case: PI15-032	Case Name:	Date Opened: 08/26/15	CASE CLOSED Date: <u>10/26/2015</u>
Complainant(s): N/A	Subject(s): Miami-Dade County Commissioner Juan C. Zapata		

Allegation(s):

On or about August 26, 2015, the COE received information in connection with Miami-Dade County Commissioner Juan C. Zapata (Zapata). The information involved Zapata's use of his County Commission office funds for payment of his tuition at Harvard University where he planned to attend either the Executive Program, or a Master's Program. Zapata's tuition payment to Harvard University was in the sum of \$30,961. Zapata's Commission Office has an annual budget of \$930,000.

The COE initiated an inquiry to determine whether it was permissible for Commissioner Zapata to pay for his tuition from his Commission Office funds.

Relevant Law:

Sec. 2-11.1, Conflict of Interest and Code of Ethics Ordinance, (g) Prohibition on exploitation of official position.

Investigation:

Records Review:

07/14/15 - E-mail from Stephanie Cornejo (Cornejo), Special Projects Coordinator & Office Administrator of Zapata's office to Barbara Galvez (Galvez), Operating Budget Coordinator,

Office of Management and Budget, asking what the County's policy is on tuition reimbursement on behalf of Zapata.

07/14/15 -- E-mail from Galvez to Cornejo explaining the details of the County's tuition reimbursement program.¹

07/21/15 -- E-mail from Bianca Caviglia (Caviglia), Director of Legislation and Policy for the Office of Commissioner Zapata, to Galvez asking for all options that Zapata qualifies for in connection with tuition and program costs assistance/reimbursement from the County.

07/23/15 -- E-mail from Galvez to Caviglia advising her that as long as the expense is for the benefit of District 11 constituency, the cost can be covered by the District Office budget the extent of which is up to Zapata. Galvez also explains the details of the County's tuition reimbursement program to Caviglia.

Galvez advised that the program being completed by Commissioner Monestime is a specific course of a limited number of weeks at a set price. Monestime covered the cost from his office funds because he determined that it was to the benefit of his district.

Galvez advised that County Commissioners have the discretion to pay from their office funds and how much they want the office budget to cover.

07/23/15 -- E-mail from Caviglia to Galvez asking whether it is possible to use a combination of the two options. Galvez replied that the whole amount of the tuition can come out of the district office budget if the Commissioner uses that option. The tuition reimbursement route uses a specific code and paperwork so that it appears as a tuition expenditure in the office budget. The Commissioner receives reimbursement for 50% of the tuition paid. There is no limit on the tuition costs.

07/24/15 -- E-mail from Caviglia to Galvez asking whether the Office budget route can be used to pay for his travel expenses.

07/24/15 -- E-mail from Galvez to Caviglia responding that if the Commissioner deems the expense to be for the benefit of his district, he can also pay for his travel expenses from the Office budget.

08/04/15 -- E-mail from Galvez to Zapata advising that she is working with Finance to get the check out, but they need confirmation from him to process the payment. Galvez also asked whether he could opt out of the health insurance since the County insurance should cover him while attending Harvard. Galvez said she plans on getting the emergency check to pay the tuition sent to him and he should have it the next day (08/05/15).

¹ The County's tuition reimbursement program is managed through HR. The program pays for 50% of tuition expenses only, no books or fees are included. The individual must get a grade of "C" or better to be reimbursed. The reimbursement is processed after the individual presents the tuition bill, proof of payment and his/her grades.

08/04/15 – E-mail from Zapata to Galvez advising that he had requested a waiver on the health insurance, but there is a health fee that is required.

08/04/15 – E-mail from Zapata to Galvez advising that he is not being charged for health insurance, and the documentation which she has is good.

08/04/15 – E-mail from Galvez to Zapata advising that she will reduce the health plan cost from the invoice value and will give him the check by Thursday, August 6th.

08/04/15 – E-mail from Zapata to Galvez advising that the health plan cost has already been deducted and the amount on the invoice is what is owed.

08/04/15 – E-mail from Zapata to Cornejo asking her to advise Galvez that the total amount to be paid is \$30,961.

08/05/15 – E-mail from Galvez to Zapata explaining that the health plan cost is still on the invoice, but she will double-check everything to make sure the check is in the right amount.

08/05/15 – E-mail from Galvez to Abigail Price-Williams (CAO) asking for confirmation from the CAO that expenses can be paid from a Commissioner Office budget if the Commissioner deems the expense to be for the benefit of his district.

08/05/15 – E-mail from R. A. Cuevas, Jr. (Cuevas) to other County Attorneys asking to discuss the matter.

08/05/15 – E-mail from Galvez to Cuevas discussing the County Travel Policy and Procedures Manual.

08/05/15 – E-mail from Cuevas to Galvez stating that Commissioners may use their Office funds to cover travel and training courses or educational programs as set forth in Sec. 112.061, Fla.Stats., Administrative Order 6-1 and Miami-Dade County Travel Policy and Procedures Manual.

08/13/15 – E-mail from Zapata to Galvez asking how to reimburse the County for the full amount paid for the program at Harvard. Zapata stated that he learned that the budget office leaked this information to the press in order to cause political embarrassment.

08/18/15 – E-mail from Erika Carrillo of Univision – Channel 23 to Michael Hernandez, Office of the Mayor, asking several questions about Zapata's use of his Office funds to pay for his Harvard tuition, etc.

08/18/15 – E-mail from John Labriola (Labriola), Office of the Chair, to Erika Carrillo advising her to contact Eduardo Marrero from Zapata's office regarding her questions.

08/19/15 – E-mail from Erika Carrillo of Univision – Channel 23 to Labriola asking several questions about Zapata's use of his Office funds to pay for his Harvard tuition.

08/19/15 – E-mail from Labriola to Galvez asking for help in answering questions from

Univision – Channel 23.

08/27/15 – E-mail from Daniel Chatlos, Director of Policy and Legislation, Office of Commissioner Zapata to Cuevas asking for a copy of his legal opinion on the use of Office funds for paying a Commissioner's graduate school tuition.

08/27/15 – E-mail from Cuevas to Daniel Chatlos forwarding to him the e-mail request for legal opinion from Galvez and his response thereto.

08/28/15 – E-mail from Cuevas to Diario Las Americas attaching the e-mail request for legal opinion from Galvez and his response thereto.

09/02/15 – E-mail from this investigator to Galvez requesting information on other commissioners who have paid their school tuition from their Office budget.

09/02/15 – E-mail from Galvez to this investigator explaining that Commissioners Sorenson, Edmonson and Monestime have attended a specific Harvard program for government/elected individuals. Galvez does not provide additional information and directs further inquiry to Finance.

09/02/15 – E-mail from Cuevas to Commissioner Xavier Suarez forwarding a copy of his legal opinion on the subject of Commission Office Expenditures.

07/14/15 – Harvard University Student Billing Statement reflecting a balance of \$30,961;

08/03/15 – Request from Galvez to Nieves C. Del Rio, Accounts Payable Unit Supervisor, Finance Department for the tuition check for Zapata payable to Harvard University;

08/05/15 – Miami-Dade County check no. 00130219 payable to Harvard University in the sum of \$30,961;

08/14/15 – Cashier's check no. 5502354629 from Zapata payable to the Board of County Commissioners in the sum of \$30,961.

Interview(s):

08/27/15 – Barbara Galvez, Operating Budget Coordinator, Office of Management and Budget –

Barbara Galvez was contacted and met with this investigator. Galvez stated that prior to her submitting Zapata's tuition for payment, she and members of Zapata's staff e-mailed back and forth on the question of the County's policy on tuition reimbursement. Galvez said that she has always been told that if a Commissioner deems a tuition expense beneficial to his/her district, the expense can be paid from the Commissioner's office budget. Galvez added that Commissioners are not under the Mayor's purview and thus can determine how they want to

spend their office funds.

Galvez said that when she was processing the payment for Zapata's Harvard tuition, she received an e-mail from Zapata asking that he wanted to reimburse his office budget and wanted to know who to make the check out to. Galvez said that Zapata's office budget was charged the total sum paid and Zapata later reimbursed his office budget. Galvez agreed to provide copies of the e-mails, checks and invoice from Harvard.

Conclusion:

There is no formal policy regarding use of Commission Office funds for educational purposes. Miami-Dade County Commissioners have broad discretion on how they use their Commission office funds as long as the expense provides a public benefit to a commissioner's district.

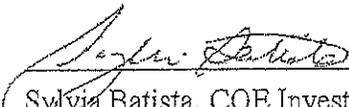
The fact that Commissioner Zapata initially sought guidance from the County budget office, and then later from the County Attorney's Office, indicates that he made an attempt to abide by accepted County practices. Although there is no precedent for the use of office funds for an out-of-town degree program of this nature, when Commissioner Zapata opted to use his office funds to pay for his tuition at Harvard he appears to have been acting with an intent to abide by accepted County practices. For that reason there could be no finding of an intentional ethics code violation, even if the expenditure were deemed inappropriate. However, his subsequent reimbursement of the funds represented an acknowledgement on his part that the arrangement created at least an appearance of impropriety due to the nature of the program and the amount of the expenditure.

This controversy presents an opportunity to re-examine the County's position on appropriate expenditures from a Commissioner's budget. While it seems reasonable to allow Commissioners to attend seminars and/or educational programs that are related to and would enhance their ability to serve the public, reasonable limits should be placed on such expenditures of public funds. It would be prudent and respectful of the public interest to place such limits on the presently unfettered discretion of County Commissioners to determine when an educational expenditure is appropriate. For example, a conference, seminar or local good governance course designed to educate elected officials on specific and relevant topics related to their service would fit within such a parameter.

One suggestion is to allow Commissioners to participate in the County's tuition reimbursement program, should a Commissioner elect to pursue a longer-term educational program that culminates in the award of an academic degree, i.e., a B.A., M.A. or Ph.D. Otherwise, it is left to the Commissioner's sole discretion to determine whether attending a university and obtaining a degree, especially from an out-of-town institution, in some way benefits his or her district. While such a benefit might accrue in a tangential sense, it should be subject to some cost/benefit analysis. For example, it is not hard to imagine that a Commissioner might decide to pursue a law degree under the theory that the advanced training would provide a benefit to the public. In such a situation, however, it would seem that the

personal benefit to the Commissioner of obtaining an advanced degree fully at taxpayers' expense outweighs whatever benefit the public receives for the expense involved. In such circumstances, it would be sensible to restrict Commissioners to the same criteria used for reimbursement of tuition afforded to regular County employees.

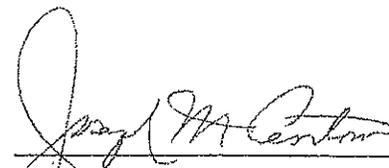
Alternatively, perhaps a monetary limit should be established for expenditures related to so-called "self-improvement" courses and any expenditure in excess of \$5000.00 for educational purposes should require Commission approval prior to the funds being expended. Such a procedure would, at least, provide more accountability and transparency.


Sylvia Batista, COE Investigator

Approved by:


Michael Murawski, Advocate

Date: 10/26/2015


Joseph Centorino, Executive Director

Date: 10/26/15