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MIAMI-DADE COUNTY, FLA.  
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**MIAMI-DADE COUNTY  
COMMISSION ON ETHICS & PUBLIC TRUST**

**In re:**

**C 14-16**

**Tomas Regalado**  
\_\_\_\_\_ /

**PUBLIC REPORT AND FINAL ORDER**

Citizen Al Crespo filed the above-referenced complaint against Respondent City of Miami Mayor, Tomas Regalado (Regalado). The complaint alleged that Regalado traveled to Argentina and that the trip was paid for by a source other than the City of Miami and Regalado failed to disclose the cost of the trip as a gift in violation of Section 2-11.1(e) of the Miami-Dade County Conflict of Interest and Code of Ethics.

Mayor Regalado did not deny that he took the trip, ostensibly as "official City business" since Buenos Aires is a "Sister City" to the City of Miami. Regalado went on the trip to promote investment in Miami. The Mayor maintained that he reasonably relied on the advice of a Deputy City Attorney who told him that he need not report the trip as a gift.

On April 16, 2014, the Ethics Commission agreed with the Advocate's recommendation that probable cause be found but the case be dismissed because respondent reasonably relied on the advice of the Deputy City Attorney. The Ethics Commission ordered a Letter of Instruction be issued to the City Attorney's Office.

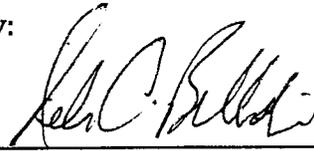
Wherefore it is:

**ORDERED AND ADJUDGED** that COMPLAINT C 14-16 against respondent Mayor Tomas Regalado is hereby concluded.

**DONE AND ORDERED** by the Miami-Dade County Commission on Ethics & Public Trust in public session on April 16, 2014.

MIAMI-DADE COUNTY COMMISSION ON ETHICS  
& PUBLIC TRUST

By:



Nelson Bellido  
Chair

Signed on this date: 4/28/2014



## LETTER OF INSTRUCTION

To: City Attorney's Office, City of Miami  
From: Miami-Dade County Commission on Ethics and Public Trust  
Re: In re: Tomas Regalado (C14-16)  
Date: May 8, 2014

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An ethics complaint was filed against the Respondent, City of Miami Mayor Tomas Regalado (Regalado), alleging that he violated Sec. 2-11.1(g)(4) of the Miami-Dade Conflict of Interest and Code of Ethics ordinance (the Code) when he traveled to Argentina from July 2, 2013 to July 6, 2013. It was determined that the trip was not paid for by the City of Miami and the Mayor failed to file the requisite gift disclosure form.

On April 16, 2014, the Miami-Dade County Commission on Ethics and Public Trust determined that there was probable cause to sustain the violation but dismissed the case pursuant to Section 2-1074(s) of the Code of Miami-Dade County and ordered a Letter of Instruction to be issued. The Commission found that Mayor Regalado relied on the advice of a Deputy City Attorney who had told the Mayor that the trip did not need to be reported as a gift because he was traveling on official City business.

WHEREFORE, the Miami-Dade County Commission on Ethics and Public Trust issues this Letter of Instruction.

Sec. 2-11.1 (g) (4) of the Miami-Dade Conflict of Interest and Code of Ethics ordinance states, in pertinent part:

“Disclosure. Any person included in the term defined in subsection (b) (1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for “local officers” with the Clerk of the Board of County Commissioners simultaneously with the filing of the form with the Secretary of State.”

Regalado does not dispute the essential facts of the case; he and his daughter Raquel Regalado, traveled to Buenos Aires, Argentina, in July 2013. The trip was funded by non-governmental sources in Argentina, and he did not file the relevant gift disclosure form for the excursion. The trip was funded by the Buenos Aires Convention and Visitors Bureau. This is a private organization, as described on its website: *“Buenos Aires Convention & Visitors Bureau is a non-profit association created by tourism associated privately held companies.”* Regalado said City funds were not used to pay for the trip, nor was the money for the trip provided to the City through the Mayor’s International Council (the MIC); a City agency empowered to accept donations that can be used for travel by City officials. The Mayor acknowledged that the airline ticket cost \$1,800 and the hotel room would have cost about \$100 per night in U.S. currency for the five-night stay.

The City of Miami Deputy City Attorney who provided the opinion to Mayor Regalado, erroneously relied on the COE document entitled “Guidelines and recommendations regarding ‘public benefit’ clauses in certain government contracts” (the Guidelines); that document deals exclusively with the receipt of event tickets by public officials that were obtained through a “public benefit” clause. Thus, reliance on this set of guidelines to analyze travel expenses received outside of a “public benefit” clause in a government contract is misplaced. Moreover, the Deputy City Attorney mistakenly focused on whether the Mayor was engaging in “official city business,” instead of who was paying for the trip.

A very similar travel issue was addressed in a previous Letter of Instruction issued to the City of Miami in case number C12-41 in 2013. That case involved a City Commissioner’s trip to Brazil that was paid for, in part, by the Greater Miami Convention and Visitors Bureau. In the Letter of Instruction issued to the City Attorney’s Office in that case, the Ethics Commission specifically stated “the guidelines contemplated for the use and distribution of tickets to local events are not necessarily applicable to all-expense paid trips to distant and exotic locales. Travel to distant locales invariably provides opportunities to combine personal enjoyment with whatever official duties may be attended to. Thus, private benefactors likely end up sponsoring the incidental, personal recreation of government officials. Accordingly, gifts of that sort deserve different consideration since the grandiose scale of the gift(s) creates proportionately larger ‘appearance of impropriety’ issues.” The context of the C12-41 Letter of Instruction is analogous to the circumstances of this trip in that both were paid for using non-City funds.

The purpose of this Letter of Instruction is to make clear, not only to the City of Miami but to all government officials, their obligation to report certain gifts of travel they may receive from time to time.

State of Florida Ethics Commission (FEC) opinion CEO 13-3 is illustrative. The facts in CEO 13-3 almost exactly mirror the facts regarding Mayor Regalado's trip to Argentina. In CEO 13-3 the Mayor of the City of Jacksonville travelled out of town advocating for the City and marketing Jacksonville as a vacation destination. The expenses for these trips were underwritten by private individuals or entities. That opinion emphatically states that "Since the gift law was first enacted in 1990, we have never concluded that a public officer had not received a gift when he traveled at the expense of someone other than his agency."

Florida Statute Section §112.3148 is entitled, "Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees." Following an amendment to §112.3148 in 1990, even gifts to reporting individuals (such as the Mayor) from certain types of governmental entities, can be *accepted* provided that a public purpose can be shown for the gift, but these gifts must still be reported.

In FEC opinion 91-57, the FEC opined that a Florida State Representative had to report as a gift, the round-trip airfare to Brussels paid for by a non-profit educational institution, as well as the room and board and ground transportation provided by the North Atlantic Treaty Organization (NATO).

The laws and rules governing the reporting of gifts can be confusing. Set forth below is a guideline the City and all municipalities should, at the very least, consult when advising their officials and/or employees about what travel constitutes a reportable gift. This checklist is by no means exhaustive but should serve as a good starting point for inquiries about reporting travel as a gift:

1. Where a public official's travel is paid for by his or her own public agency and a public purpose for the travel exists, this does not constitute a reportable gift. Note, however, that if the public agency pays for travel expenses for a companion of the City official (i.e. the spouse), that is considered an indirect gift to the official and must be reported. (CEO 06-27 and COE complaint C11-14)
2. Similarly, it would not be a gift for a public official to travel at his or her own expense for a public purpose and then be reimbursed by his or her own agency assuming the expenses were properly documented by receipts.
3. An official may travel for a public purpose and have that travel paid for by his or agency. If the agency is then reimbursed by a third party,<sup>1</sup> that would constitute a gift to the agency, not to the

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<sup>1</sup> One must be mindful of the restrictions set out in F. S. § 112.3148 as well as Section 2-11.1 (w) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance entitled Prohibition on acceptance of travel expenses from [City] vendors.

official. Such a gift would not need to be reported by the official. (CEO 91-21) The City of Miami already has a mechanism in place, the MIC, which allows monetary donations from third parties to be deposited in a public account and used to pay for the Mayor's travel on official city business.

4. Where the City receives donations from the private sector and uses the donations to pay for official travel, the donations are gifts to the City not to the individual official, and thus they need not be reported as gifts. (See CEO 13-3)

The mechanisms mentioned in numbers 3 and 4 above are not merely a distinction without a difference. As pointed out in CEO13-3, "[A]n agency's up-front payment of an official's travel expenses ensures that the agency has made a decision, in advance, that the travel is necessary, takes advantage of the agency's transparent process for approving official travel in advance and ensures that the traveler is reimbursed at the government rate. In this way, the agency can offset the expense to its taxpayers of necessary official travel, while the public is protected against the potential for abuse which could arise if all travel for which any nominal public purpose could be identified were to be considered a gift to the agency." This method permits transparency in that it allows citizens to see who is providing the funds that sponsor official travel.

Although not relevant to the travel engaged in by Mayor Regalado in this case, mention was made at the probable cause hearing in this case about the concept of "equal or greater consideration" being given by the "donee" (recipient of the "gift") to the "donor" such that item (s) given do not amount to a reportable "gift." It is important to note that the services rendered by the government official/reporting individual in his or her official capacity on behalf of their public agency, do not count as consideration to any person or entity other than the official's agency. In other words, the reason why a gift of travel is not considered a gift to an official if his or her city pays for the trip (and it is for a public purpose) is because the official is providing consideration back to his or her City in connection with the trip. This cannot be accomplished where the public official is travelling on alleged public business but the trip is being paid for by some third party. By the same reasoning, an official who, in his or her private life, has to go on a business trip paid for by their private employer does not receive a reportable gift because services are provided as consideration back to the private employer.

Although Mayor Regalado's trip in this case does not appear to fall into the "honorarium" category the City Attorney's Office should acquaint itself with Florida Statute §112.3149, which governs honoraria and honorarium event-related expenses. There are significant reporting requirements for honoraria that are received. It is worth noting that there is no specific mention of the term "honoraria" in the Miami-Dade County Code of Ethics.

By issuing this Letter of Instruction, we hope to educate not only the City of Miami but all elected and appointed officials and government employees. The laws concerning what does and does not constitute a reportable gift can be complicated and often hinge on the facts of a specific case. We trust that the City will use this Letter of Instruction as a helpful tool and as a guide in the future. All persons subject to the jurisdiction of the Miami-Dade County Commission on Ethics and Public Trust are encouraged to seek opinions from the Commission whenever they have a question as to the applicability of the ethics code.