

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, August 07, 2018 4:14 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-190 Thomas Pepe, City Attorney, City of South Miami (Exploitation, Right to be Heard)

INQ 18-190 Pepe

From: Centorino, Joseph (COE)
Sent: Tuesday, August 07, 2018 3:54 PM
To: 'tpepe@southmiamifl.gov' <tpepe@southmiamifl.gov>
Cc: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>
Subject: INQ 18-190 Thomas Pepe, City Attorney, City of South Miami (Exploitation, Right to be Heard)

Mr. Pepe,

In response to your inquiry below, there is no prohibition that would prevent Commissioners or members of the public from commenting during a City Commission meeting on ballot items of concern to the City of South Miami.

In regard to the officials, this issue is distinguishable from INQ 16-235, in which you were advised that a Commission member should not be permitted to make a political speech in favor of a candidate at a Commission meeting during an election, as that could constitute an Exploitation of Official Position under Section 2-11.1(g) of the County Ethics Code. Although political activity on behalf of a candidate is not appropriate in the context of a government meeting, which should be relegated to public business, discussion regarding a pending ballot issue that affects the City of South Miami or the public at large is a matter of general public concern rather than partisan preference. Therefore, Section 2-11.1(g) would not prohibit such discussion at a public meeting. Moreover, although this agency is not empowered to provide binding opinions of Section 106.113, Florida Statutes, I note that the statute contains an explicit provision that may require permission of such discussion. While subsection 106.113(2) prohibits a local government from spending public funds "for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state question that is subject to the vote of the electors," the following subsection, 106.113(3) states that the prohibition "does not preclude an elected official of the local government from expressing an opinion **on any issue at any time.**" (emphasis added).

In regard to members of the public, the same distinction between public and partisan issues would apply, provided that the remarks are limited to addressing issues of public concern, such as a ballot item affecting the City, rather than a personal or partisan preference for a candidate. There is generally broad latitude allowed to members of the public in addressing matters of public concern at public meetings. I would also cite Section (A)(5) of the Miami-Dade County Citizens' Bill of Rights, with which you are familiar, which requires that interested members of the public be permitted to be heard "for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved..." I am inclined to the view that an issue that would have an impact on the City of South Miami and its government would fall within this provision.

Sincerely,

Joe Centorino

Joseph M. Centorino

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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Tuesday, August 07, 2018 1:38 PM
To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: Ballot Question and Public Comments

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There is a ballot question concerning the City of South Miami and I am sure that the Commissioners and the public will want to speak about it, and advocate for and against the item. It is my understanding that the Commissioners cannot advocate for or against the item from the dais but otherwise they can do so as long as they do not use public resources. Is that correct?

Can the Mayor allow the public to advocate for or against the ballot question during public comments at the commission meeting that will be broadcast on channel 77?

Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney, Board Certified by the Fla. Bar
in City, County and Local Government Law.
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