

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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November 26, 2019

Via Electronic & U.S. Mail

Honorable David Williams, Jr.
Miami Gardens Councilman
18605 Northwest 27th Avenue
Miami Gardens, Florida 33056

Re: INQ 19-124, Recommending the Hire or Retainer of a Person for City Charitable Event,
Section 2-11.1 (p), Ethics Code

Dear Councilman Williams:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts:

The City of Miami Gardens, in partnership with local universities, has sponsored the annual Miami Gardens Science and Engineering Fair ("Fair") for several years. The Fair is focused on exposing elementary school students to science, engineering and technology. In past years, it has involved as many as 150 students from 18 different schools. Top student projects receive cash awards.

In your official position as a Councilman for the City of Miami Gardens, you have solicited charitable donations in support of the Fair. The donations were deposited in City of Miami Gardens accounts. City financial or administrative staff keep a ledger of funds that you have solicited as opposed to those solicited by other elected officials.

As the Fair's primary supporter on the Council, you have at least the *de facto* ability to influence, recommend or direct the disbursement of solicited funds to purchase items or to retain vendors or service providers to support the Fair.

In addition to serving as a Miami Gardens Councilman, you are also a candidate for Florida State House of Representatives, District 102. Your State House Representative Campaign has hired Glenn Joseph as a consultant and your campaign expenditure reports reveal that Mr. Joseph has been thus far paid \$6,000 in fees.

You were considering recommending or directing Mr. Joseph's hire to preform services in support of the 2019 Miami Gardens Science and Engineering Fair and to recommend or direct payment for his services from your solicited charitable contributions on account with the City of Miami Gardens.

You inquired whether there is any provision in the Miami-Dade Ethics Code that would prohibit you from hiring your political campaign consultant to perform services as a "municipal vendor" in support of the Science Fair and his payment at your direction from your solicited charitable contributions on account with the City of Miami Gardens.

After our preliminary discussion of the matter, you advised that you have decided not to engage Mr. Joseph in relation to the Fair. This informal opinion is thus provided as a reference for similar scenarios that may arise in the future.

Discussion:

There are two sections of the Ethics Code that may be implicated in a scenario as you originally described.

First, Section 2-11.1 (p) of the Ethics Code prohibits an elected Councilman or Mayor from recommending the services of any person or firm to assist in any transaction involving the City or any of its agencies unless the recommendation is made when "required to be made by the duties of office" in advance at a public meeting.

The latter allowance under that section would apply primarily to a final procurement authority votes that come before you as a Councilman or perhaps the appointment of an employee or official that is a Council appointment pursuant to Charter or Ordinance. It has also been interpreted to allow a municipal attorney to retain lawyers and other experts in discharge of the duties of their office. However, there are limitations on this practice. (*See generally* RQO 19-01)

In this case, it would seem that that your recommendation of Mr. Joseph would not be captured by the latter clause inasmuch as your recommendation would be discretionary and not "required" by your duties as a Councilman. Thus, Section (p) would have likely prohibited your recommendation that he do work on the City of Miami Gardens Science and Engineering Fair.

You may also wish to consider Section 2-11.1 (g) of the Ethics Code. This is the general exploitation section of the Ethics Code. While not suggesting that this is the case, the proposed action could have created the appearance that you were using your official position as a Councilman to direct funds to your campaign consultant and thus using your official position to secure special privileges for Mr. Joseph.

Finally, because you were recommending or directing the payment of funds that you solicited to your campaign consultant, this action might have implicated state campaign contribution and expenditure statutes. I do not have the authority or expertise to opine on the application of these statutes to your previously contemplated action. I would only as a courtesy suggest that you may wish to consult with the Florida Elections Commission for further guidance in similar situations.

Of course, you decided not to engage in the described transaction.

Opinion:

For future guidance in similar scenarios, and consistent with the details provided to me, I would conclude that the Section 2-11.1 (p) of the Ethics Code may be implicated when an elected official recommends the hire of any person to assist in any municipal transaction or event if done so in a discretionary capacity not otherwise required by the duties of office.

Moreover, depending on the specific relationship between the elected official and the person recommended for hire, Section 2-11.1 (g) of the Ethics Code may likewise prohibit an elected official from recommending the hire of a person to engage in a municipal transaction or event, if done so in a discretionary capacity not otherwise required by the duties of office.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs like this one, are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Arrojo", with a stylized flourish at the end.

Jose. J. Arrojo
Executive Director

cc: COE Legal Staff

Handwritten signature or initials in blue ink.