


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Kionne McGhee
County Commissioner for District 9

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: INQ 2020-131, Sections 2-11.1(e), Gift Solicitations

DATE: December 2, 2020

CC: COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to gift solicitations.

Facts:

You serve on the Board of County Commissioners for District 9. It has become known to you and members of your staff that there are elderly residents in your district that need assistance with food and other necessities of day to day life. Many of the residents frequent County parks (Parks, Recreation, and Open Spaces or “PROS”) and use PROS facilities and services. As such, they are known to County PROS employees who work in these parks.

In order to aid these elderly residents in need, you have proposed soliciting donations in the form of “gift cards” from individuals or private businesses in your district. The donations will be used by the elderly residents to purchase food and other necessities. County PROS employees in your District will identify the elderly recipients and will assist in the distribution of the gift cards. You and your District staff may be involved in publicizing this service and in the distribution.

Issue:

Whether a County Commissioner may solicit charitable donations in the form of “gift cards” from individuals and private businesses to aid elderly residents where the selected recipients will be

identified by County Parks and Recreation staff and distribution will be handled by County Parks staff along with the Commissioner and members of his District Staff.

Discussion and Opinion:

The County Ethics Code at Section 2-11.1 (e)(3) generally prohibits the solicitation or demand of a gifts by local employees and elected officials.

Section 2-11.1 (e)(3) Prohibitions. A person described in subsection (b)(1) [mayors and commissioners] through (6) shall neither solicit nor demand any gift.

The applicable exceptions to the general gift solicitation ban are contained in subsections 2-11.1 (e)(2)(f) and (2)(g) which allow the solicitation of gifts by commissioners in the performance of their official duties for use solely by their government entity in conducting official business.¹

Accordingly, the Ethics Commission has recognized that private donations and funds can be properly relied upon to support essential government functions and to promote government-sponsored community programs and charitable causes and events which clearly serve a public purpose, including feeding or aiding those in need. However, the Ethics Commission recommends that local governments should adopt safeguards to avoid appearances of impropriety and to ensure that solicitation, acceptance, and use of private funds are governed with the highest standard of ethics, transparency, disclosure and accountability in these solicitation and funding processes. *See generally* RQO 02-70; INQ 13-70; INQ 19-124.

Prior Ethics Commission opinions regarding solicitation of charitable contributions are instructive on this point. Solicitations of donations from private businesses should be broad based. The Ethics Commission has cautioned against direct solicitation of current or future County vendors and contractors, while recognizing that these parties can be part of a larger solicitation that includes members of the general community. RQO 06-05.

Also, the Commission has approved of solicitations for a specific purpose. For example, a city may receive sponsorship donations that will go to municipally hosted events (like a July 4th Celebration) but must avoid any implication of a quid pro quo regarding solicited vendors that agree to participate. INQ 16-160. For other specific holiday functions or to aid residents in need, the Commission has concluded that accepting and immediately distributing the donated items to recipients is permissible under the Code. Specifically, it has approved of immediate distribution of turkeys or food items donated by county bidders that go to less advantaged families after donation. INQ 15-255.

¹ Because businesses or persons that are solicited may feel compelled to donate because of the official's position, the soliciting official should be careful to avoid any appearance that he or she is: using or attempting to use his or her official position to secure special benefits for others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted by the Board of County Commissioners. *See* Section 2-11.1(g) of the County Ethics Code.

As long as your solicitations are broadly based, and you and your staff use the described transparent process for selection and distribution of donated gift cards via County PROS staff with knowledge of persons in need, then your proposed solicitation of charitable donations from private businesses to aid elderly residents does not violate the County Ethics Code.

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 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.