


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Daniella Levine Cava
Mayor

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2020-135, Section 2-11.1(e), Gift Solicitations, County Ethics Code.

DATE: December 22, 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 charitable gift solicitations.

Facts:

You are the recently elected Mayor of Miami-Dade County, Florida. You are launching the “Thrive 305” (“Thrive”) initiative.

Thrive is similar to Talking Transition (“TT”) projects in other major American cities including New York, Washington, D.C., and Houston. TT projects are designed to engage the public at the commencement of a new administration. Citizens are afforded the opportunity to provide input regarding what they view as critical issues. Thereafter, in collaboration with community groups and subject matter experts, these civic interactions result in action plans that inform an administration’s policy and action agenda. Thrive critical issues will include how the County recovers from COVID-19.

HR&A Advisors, Inc., an employee owned for-profit firm, has managed TT initiatives in other cities in partnership with the Ford Foundation. Ford is a private philanthropic entity that focuses, in part, on increasing historically under-represented group participation in policy making. HR&A will serve as the managing consulting firm for Thrive and will be compensated for its service by Ford. HR&A will not be a County contractor or vendor.

As part of this initiative, it is anticipated that you or members of your staff will be soliciting donations from nonprofit entities to support outreach, civic engagement infrastructure, surveys, and other activities relating to Thrive.

Solicited donations to support Thrive will be received, maintained, and managed by The Miami Foundation. The Miami Foundation is a nonprofit entity that partners with donors, manages philanthropic funds, and provides support for grant funded programs and operations. For Thrive, it will assist with convening public meetings, identifying partner agencies and managing the contracting of the agencies. While Foundation staff may consult with you or your staff regarding the selection and contracting of some partner agencies, it will be the Foundation's responsibility. The Foundation will not be contracting with Miami-Dade County as part of this process.

Issue:

Whether, pursuant to the County Ethics Code gift provisions, the County Mayor, or staff, at her direction, may solicit charitable donations from nonprofits to fund an initiative to solicit community input on critical issues, partner with community groups and subject matter experts, and generate action plans that will inform the Administration's early policy and action agenda.

Discussion and Opinion:

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

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 exceptions to the general gift solicitation ban are contained in subsections 2-11.1 (e)(2)(f) and (2)(g) of the County Ethics Code. Those provisions allow the Mayor to solicit gifts in the performance of her official duties for use solely by the County in conducting its official business.¹ Also, the Mayor and her staff may solicit gifts on behalf of a nonprofit organization for use solely by the nonprofit.

As such, the Ethics Commission has recognized that donations can be properly relied upon to support essential government functions and to promote government-sponsored

¹ For purposes of the Section 2-11.1(e) relating to gifts, the Mayor is treated in the same manner as Commissioners inasmuch "Commissioners" when used in the County Ethics Code refers to the Mayor and members of the Board of County Commissioners. See Section 2-11.1(b)(1) of the County Ethics Code.

community programs, initiatives, and charitable causes and events, that serve a clear public purpose when neither the elected official or his or her staff derive any financial benefit from the solicitation. *See generally* INQ 17-203.

In prior opinions, the Commission has concluded that 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. Also, the Commission has determined that an elected official may host a “GoFundMe” page on a crowdfunding website to solicit donations that will be transferred to the city for the purchase and installation of solar panels on municipal roadways. INQ 17-203.

However, the Ethics Commission recommends that officials should adopt safeguards to avoid appearances of impropriety and to ensure that solicitation, acceptance, and use of funds are governed with the highest standard of ethics, transparency, disclosure and accountability in the solicitation and funding process. *See generally* RQO 02-70; INQ 13-70; INQ 19-124.

Again, prior Ethics Commission opinions regarding solicitation of charitable contributions are instructive on this point. Solicitations of donations should be broad based. The Ethics Commission has cautioned against direct and targeted 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 06-05.²

Likewise, in terms of the disbursement of the solicited contributions, the Ethics Commission has recommended against elected official “directed” awards. The disbursement of funds or the selection of donation recipients should include impartial third parties or organizations. In one recent instance, the Commission approved of the distribution of gift cards solicited by an elected official for needy elderly residents, when the recipients would be determined by County parks (PROS) employees who are familiar with this cohort that utilize park facilities and resources. INQ 2020-13.

² Because nonprofits, for profit businesses, or persons that are solicited, may feel compelled to donate because of the official’s position, the soliciting official or her staff member 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.

Conclusion:

Applying the reasoning of the previous opinions issued by the Ethics Commission to the facts here, an initiative that will endeavor to solicit community input on critical issues, partner with community groups and subject matter experts, with goal of generating action plans that will inform the administration's early policy and action agenda, will serve a clear public purpose.

From the facts provided, neither the Mayor nor any member of her staff will derive a financial benefit from the solicitation or award of the donated funds.

Charitable donations solicited by the Mayor and her staff will be received, maintained, and disbursed by the Miami Foundation. While the Mayor and her staff will be involved in the initiative and will consult with the Miami Foundation throughout the project, the selection of community groups and subject matter experts will be managed by the Foundation.

HR&A's service as the managing consultant for this initiative results from its unique foundational experience with establishing TT initiatives and managing them in several other major American cities. It comes to the Thrive initiative as a partner to the Ford Foundation and it will be compensated by Ford.

As such, solicitations to support the Thrive TT project, as described, are permissible as an exception to the general gift solicitation ban under subsections 2-11.1 (e)(2)(f) and (2)(g) of the County Ethics Code.

We hope this opinion is of assistance and we remain available to discuss any matters addressed herein. Also, 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.