
From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, April 28, 2015 3:31 PM
To: Sanchez, Rodzandra (COE)
Subject: Thomas F. Pepe, City Attorney, City of South Miami (Gifts) INQ 15-78

INQ 15-78 Pepe

From: Centorino, Joseph (COE)
Sent: Tuesday, April 28, 2015 3:24 PM
To: 'TPepe@southmiamifl.gov'
Cc: Diaz-Greco, Gilma M. (COE)
Subject: INQ 15-78 Thomas F. Pepe, City Attorney, City of South Miami (Gifts)

Mr. Pepe:

You have inquired regarding whether a City of South Miami commissioner may, at a commission meeting, promote a running event sponsored by a non-profit organization, where the sponsor requires participants to pay a registration fee that will be used to pay the cost of the event, but where the balance will be donated to a charity by the sponsor.

I will assume for the purposes of this inquiry that the language used by any commissioner in question would be for the purpose of encouraging members of the public to participate in this event, and, thereby, to pay the registration fee for the purpose of benefiting the designated charity. The registration fee would represent a gift insofar as it would include a portion to be donated to a specified charitable cause. The portion of the registration fee attributable to the charitable donation would, in effect, be a gift under Section 8A-1(e)(3) of the South Miami Code, since the amount of the registration fee would exceed the amount of the consideration provided for the event itself.

Unlike the County Ethics Code, the City of South Miami Ethics Code does not contain an exception for gifts solicited on behalf of a charitable 501(c)(3) organization. Therefore, I would not read such an exception into the South Miami Code, which pretty closely follows the County Code in describing what is a gift, but does not include the exception that is provided under the County Code for charitable solicitations. The City of South Miami is permitted to impose a stricter standard for solicitation of gifts than does the County Code.

Accordingly, the broad prohibition against gift solicitation under Section 8A-1(e)(3) would apply to this solicitation, and the commissioner should not participate in soliciting for this gift.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust

From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Thursday, April 09, 2015 6:32 PM
To: Diaz-Greco, Gilma M. (COE)
Subject: Commissioner sponsoring a non-profit event

Can a commissioner, at a commission meeting, promote a running event sponsored by a non-profit organization when the sponsor requires participants to pay a registration fee

the will be used to pay the cost of the event and the balance will be donated to a charity by the sponsor?

After speaking to you on the phone, I researched our ordinance and I didn't find anything that would prohibit the promotion of such an event. I think it was your opinion that it was prohibited by the City's ethics ordinance 8A-1 (e) (3). I think that what you were saying was that the commissioner would be soliciting a gift for the third party, i.e., the corporate sponsor of the running event. 8A-1 (e) (3) prohibits a commissioner from soliciting a gift but it doesn't say whether the prohibition involves a gift being solicited for himself or whether it includes a solicitation of a gift for a third party. Was it your opinion that it prohibits the solicitation of a gift for a third party and that when the commissioner promotes the event he is soliciting someone to give their money to the third party?

If that is the case, wouldn't it be different in the case of a running event since the payment of the registration fee is not a gift because the person paying the fee gets something of value for his payment, i. e., the opportunity to run in the event?

8A-1 (e) (3) *Prohibitions.* A person described in paragraphs (b)(1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give or agree to give to any person included in the terms defined in paragraphs (b)(1) through (6), or for any person included in the terms defined in paragraphs (b)(1) through (6) to accept or agree to accept from another person or entity, and gift for or because of:

- a. An official public action taken, or to be taken, or which could be taken, or an omission or failure to take a public action;
- b. A legal duty performed or to be performed, or which could be performed, or an omission or failure to perform a legal duty;
- c. A legal duty violated or to be violated, or which could be violated by any person included in the term defined in paragraph (b)(1); or
- d. Attendance or absence from a public meeting at which official action is to be taken.

Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney
City of South Miami
1450 Madruga Avenue, Ste 202,
Coral Gables, Florida 33146
Tel: (305) 667-2564
Fax: (305) 341-0584
E-mail: tpepe@southmiamifl.gov

ATTENTION: This e-mail may contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the addressee named above. If you are not the intended receiver, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone, call collect if outside of your area code and delete this e-mail. We will reimburse you for the cost of your long distance call. Thank you. Please also note: All e-

mails to and from this e-mail site are kept as a public record. Your e-mail communications, including your e-mail address may be disclosed to the public and media at any time pursuant to Florida Statutes, ch. 119.