
INQ 16-04 Roth

From: Centorino, Joseph (COE)

Sent: Friday, January 15, 2016 4:35 PM

To: 'lroth@cityofhomestead.com' <lroth@cityofhomestead.com>

Cc: 'Robert Meyers' <RMeyers@wsh-law.com>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>; Sanchez, Gerald (CAO) <gks@miamidade.gov>

Subject: INQ 16-04 Larry Roth, Councilman City of Homestead (Gift Solicitation for Non-Profit)

Councilman Roth:

You have inquired concerning limitations on your ability to fundraise for non-profit entities in your capacity as president of This Is For The Kids, Inc., a non-profit entity, while serving as an elected Councilmember in the City of Homestead. This Is For the Kids, Inc. is an active Florida 501(c)(3) corporation in existence since 2012, which raises funds for local children's charities and seeks sponsorships from vendors when it holds events. You have indicated that you receive no compensation of any kind from the organization, other than reimbursement for out-of-pocket expenses, and that you receive no compensation or other private benefit from whatever contributions you generate. You seek advice regarding limitations on your fundraising for the organization, including using your official capacity in solicitations and soliciting from city vendors, contractors, proposers, bidders, lobbyists and others transacting business with the City of Homestead.

Section 2-11.1(e)(3) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance provides a broad prohibition against the solicitation of gifts by any municipal elected official or public employee. Exceptions from this express prohibition include gifts solicited on behalf of the municipality in performance of one's official duties for use solely by the municipality in conducting its official business (Sec. 2-11.1(e)(2)(f)); and gifts solicited by elected officials or their staff members on behalf of any 501(c)(3) nonprofit organization for use solely by that organization, where neither the official nor the staff receives any compensation as a result of the solicitation.

Regardless of the circumstances of a solicitation, there would almost always be a prohibition against soliciting or accepting any gift from any individual or entity with any understanding or expectation that there would be any action taken by you as a public official in consideration of the giving of the gift. See Section 2-11.1(e)(3), Miami-Dade Code. Not only is this an ethical prohibition, but if there is a *quid pro quo* exchange of any private benefit, even if intended for a charitable purpose, in connection with an action you might take as a public official, the exchange could also constitute Bribery, a felony offense under Florida law.

Assuming that there is no such exchange suggested or contemplated, your solicitation on behalf of a non-profit organization would fall under the provision cited above (Section 2-11.1(e)(1)(g)), which provides a general exemption for solicitation of non-profit organizations. Since the exemption also applies to staff members of an elected official, it is clear that the intent of the exemption would apply to the use of your office and office resources in making the solicitation. The use of one's official position to make solicitations for charitable causes has been permitted in past interpretations by COE staff of the ordinance. See, e.g., INQ 11-180 and INQ 09-110. A solicitation on behalf of an organization with which an elected official is personally involved as an officer or director, similar to your situation with This Is For The Kids, Inc., is not addressed in the ordinance, so it would appear that you are permitted under the ordinance to solicit on behalf of the organization in your official capacity. However, given that you may receive some

intangible benefit or enhancement, political or otherwise, from such fundraising due to your personal connection to the organization, I would suggest that you avoid making explicit references to your public position in such fundraising solicitations in order to avoid creating an appearance of impropriety that might arise under these circumstances.

Fundraising solicitations to individuals or entities doing business with the City of Homestead may also create appearances of impropriety or undue influence. There is no explicit prohibition against such solicitations. However, whenever an elected official makes a direct and personal solicitation to a contractor, vendor or lobbyist or anyone who may be seeking a contract or other favorable action from the government, there is a distinct possibility that the individual solicited will subjectively believe that there could be a public benefit provided in return for making a contribution. This could be the case regardless of your own benign intent.

Although this agency does not provide binding interpretations of or enforcement of Florida law, you should also be made aware of the provisions of Section 112.3148, Florida Statutes. Subsection 112.3148(3) prohibits **solicitation** by an elected official of a gift from vendor doing business with your government agency, a political committee, or a lobbyist who lobbies your agency, that is for the personal benefit of the official. Subsection 112.3148(4) prohibits the **acceptance** of a gift by an elected official from such vendors, political committees or lobbyists in excess of \$100, unless the gift is accepted on behalf of a governmental entity or a charitable organization and the person receiving the gift does not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for transfer of custody and ownership of the gift.

Based on the circumstances that you have related, I recommend that you avoid direct, personal solicitations from any contractor, vendor or lobbyist having an interest in City business that will come before the Homestead City Council. A general solicitation going out from your organization to such individuals is preferable to your direct and personal involvement in the solicitation.

Please be advised that, in the event that a matter affecting This Is For The Kids, Inc. should come before the Homestead City Council, you would be required to recuse yourself from the vote due to your position as an officer of that organization, pursuant to Section 2-11.1(d) of the County Code of Ethics.

Please contact me should you have any further questions about these matters.

Sincerely,

Joseph M. Centorino

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