

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, August 25, 2016 9:47 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Thomas Pepe, City Attorney, City of South Miami, (Canvassing Board) INQ 16-207

[INQ 16-207 Pepe](#)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, August 25, 2016 9:47 AM
To: 'Thomas Pepe' <tpepe@southmiamifl.gov>
Cc: Centorino, Joseph (COE) <CENTORI@miamidade.gov>; Murawski, Michael P. (COE) <MURAWSK@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: Thomas Pepe, City Attorney, City of South Miami, (Canvassing Board) INQ 16-207

Dear Mr. Pepe:

You have inquired whether the County Ethics Code would prohibit a City Clerk, the County Supervisor of Elections, or a City Attorney from being appointed to serve on the City of South Miami's Canvassing Board.

As background, you advise that the City of South Miami is considering an amendment to the City's Charter Article V, Section 5(b). This article specifies that the City's Canvassing Board, which certifies election results, is comprised of the majority of the Commission and the City Clerk. A charter amendment is being considered because it is common for a majority of the Commission to be running for election during every election cycle creating the possibility of conflicts of interest.

Nothing in the County Ethics Code prohibits a City Clerk from serving on a canvassing board. We note that the City Clerk is routinely included in municipal ordinances establishing Canvassing Boards. See *e.g.* City of Coral Gables Code § 22-2(c). With respect to the County Supervisor of Elections (or her designee), the County Ethics Code does not address the issue of the County's Supervisor of Elections or his or her designee serving on a municipal Canvassing Board. Generally, a municipality cannot compel a County official to serve on a City board if she does not want to serve. You should therefore consult with the County Elections Department before including the County Supervisor of Elections in an amended version of Article 5.

Regarding the City Attorney serving on the Canvassing Board, there would likely be a legal ethics issue raised because a City Attorney serving on a City Canvassing Board could not also be the legal advisor to the Board and could not represent the Board in any litigation that might arise out of the election in which the City Canvassing Board would be a named party. Given that a City Attorney serving on a City Canvassing Board could find his independence of judgment affected in either role, it could also lead to a prohibition under Section 2-11.1(j) of the County Ethics Code. If you have further questions on this matter you may wish to consult with Attorney Oren Rosenthal, who acts as legal advisor to the County Canvassing Board.

Please contact us if we may be of further assistance.

Best regards,

[Gilma \(Mimi\) Diaz-Greco](#)
Staff Attorney



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From: Thomas Pepe [<mailto:tpepe@southmiamifl.gov>]
Sent: Friday, August 19, 2016 5:53 PM
To: Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>
Subject: RE: South Miami Conflict of Interest Question re Canvassing Board

The following is the section of the city charter that you requested.

Article V, Section 5,

B. Canvassing Committee Upon the closing of the polls and the casting of the ballot by the last person then entitled to vote, the Canvassing Committee, comprised of the majority of the Commission and the City Clerk, shall publicly record the results of the election and proceed to tabulate the absentee ballots and certify the results. (See Art. II, Sec. 2)

Thomas F. Pepe, City Attorney
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City, County and Local Government Law*
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From: Diaz-Greco, Gilma M. (COE) [<mailto:GDIAZGR@miamidade.gov>]
Sent: Friday, August 19, 2016 1:41 PM
To: 'Thomas Pepe' <tpepe@southmiamifl.gov>
Subject: RE: South Miami Conflict of Interest Question re Canvassing Board

Mr. Pepe:

I have a few questions regarding this inquiry. Would you please call me at (305) 350-0638?

Thanks and best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Thomas Pepe [<mailto:tpepe@southmiamifl.gov>]
Sent: Thursday, August 18, 2016 2:47 PM
To: Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>
Subject: South Miami Conflict of Interest Question re Canvassing Board

Do you see any conflict of interest in having the City Attorney and City Clerk, along with the County Supervisor of Elections, be members of the City's Canvassing Board for all City elections.

Thank you.

Thomas F. Pepe, City Attorney

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