

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Wednesday, August 16, 2017 10:58 AM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** Xavier Alban, Assistant City Attorney, City of Miami (Gifts) INQ 17-203

INQ 17-203 Alban

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**From:** Centorino, Joseph (COE)  
**Sent:** Wednesday, August 16, 2017 10:54 AM  
**To:** 'Alban, Xavier E.' <XEAlban@miamigov.com>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Ethics (COE) <ethics@miamidade.gov>  
**Cc:** Mendez, Victoria <VMendez@miamigov.com>; Min, Barnaby <bmin@miamigov.com>; Gomez, Marta <martagomez@miamigov.com>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>  
**Subject:** INQ 17-203 Xavier Alban, Assistant City Attorney, City of Miami (Gifts)

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Mr. Alban:

This is in response to your email of April 24, as well as our subsequent communications concerning whether there are any ethical prohibitions for a member of the Miami City Commission, as well as the Mayor, to establish a GoFundMe page to collect money to install solar panels throughout the City. GoFundMe([www.gofundme.com](http://www.gofundme.com)) is a crowdfunding/fundraising website that allows individuals, groups, and organizations to securely solicit and accept donations. The funds collected for the indicated purpose would be transferred to the City as a donation from the official involved and used for the purchase and installation of solar panels on City roadways, which would be owned by the City of Miami. The panels would allow the City to utilize the solar power, thereby reducing the amount of public funds needed to pay the City's electric utility bills, thereby reducing the City's carbon footprint and pollution. The information provided by you indicates that any elected official who may initiate or participate in the establishment of the program would not derive any financial benefit from the program.

Section 2-11.1(e) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance provides guidelines for the solicitation, acceptance and reporting of gifts by public officials and employees in the County, including officials and employees in the City of Miami. Subsection 2-11.1(e)(2)(f) specifically permits the solicitation of gifts by such officials in the performance of their official duties for use solely by the City in conducting its official business. Section 2-613 of the City of Miami Code of Ordinances prohibits acceptance of gifts by City officials or employees "except where given for the use and benefit of the City." Section 112.3148, Florida Statutes, prohibits reporting individuals or procurement employees in government agencies (which include elected officials) from soliciting a gift from an agency vendor or lobbyist or a political committee "for the personal benefit" of such individual (Subsection 112.3148(f)(3)), as well as the acceptance of gifts valued at over \$100 from such persons or entities, unless the gift is accepted on behalf of a governmental entity or charitable organization, in which case the person receiving the gift may not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift (Subsection 112.3148(4)).

The program you have described carries with it a clear public purpose, intended to benefit the City, a government entity. Therefore, it does not appear that any of the prohibitions in the aforesaid provisions would prevent the official involved from engaging in this activity. However, there are several caveats or recommendations that are appropriate under these circumstances.

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First, it would not be appropriate for such gifts to be transferred to the City as the “donation from the Commissioner (or Mayor).” An official involved in the program as described by you may be a solicitor or conduit for the contributions, but is not the source of the donation. An official may be identified as the proposer or initiator of the program, however.

Second, I recommend that to establish the program as one involving the official’s duties as well as the City’s official business, it would be appropriate for the City Commission to explicitly endorse the program.

Third, the beneficiary of any such gift should be explicitly stated to be the City of Miami.

Fourth, the control of the gift and its transfer to the City should be through a City departmental manager or employee, rather than an elected official, to avoid an appearance or perception that the program has other than an official City purpose.

Please contact me should you have any further questions or input.

Sincerely,

Joe Centorino

*Joseph M. Centorino*

Executive Director and General Counsel  
Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
Tel: (305) 579-2594  
Fax: (305) 579-0273  
[ethics.miamidade.gov](http://ethics.miamidade.gov)



**From:** Alban, Xavier E. [<mailto:XEAlban@miamigov.com>]

**Sent:** Monday, April 24, 2017 5:00 PM

**To:** Centorino, Joseph (COE) <[Joseph.Centorino@miamidade.gov](mailto:Joseph.Centorino@miamidade.gov)>; Perez, Martha D. (COE) <[perezmd@miamidade.gov](mailto:perezmd@miamidade.gov)>; Ethics (COE) <[ethics@miamidade.gov](mailto:ethics@miamidade.gov)>

**Cc:** Mendez, Victoria <[VMendez@miamigov.com](mailto:VMendez@miamigov.com)>; Min, Barnaby <[bmin@miamigov.com](mailto:bmin@miamigov.com)>; Gomez, Marta <[martagomez@miamigov.com](mailto:martagomez@miamigov.com)>

**Subject:** Inquiry - City of Miami

Good afternoon Director Centorino:

The City is submitting the following Inquiry for your consideration.

A City Commissioner wishes to establish and run a GoFundMe page to collect money to install solar panels on streets throughout the City of Miami ("City"). GoFundMe ([www.gofundme.com](http://www.gofundme.com)) is a crowdfunding/fundraising website that allows individuals, groups, and organizations to solicit and securely accept donations. All funds collected through GoFundMe would be transferred to the City as a donation from the Commissioner and used for the purchase and installation of solar panels on City roadways. The solar panels would be owned by the City of Miami. These solar panels would allow the City to power various items (streetlights, city-owned properties, etc.) using solar power, thereby reducing the amount of public funds needed to pay the City's electric utility bills. Further, the use of solar panels will help reduce the carbon footprint of the City and result in less pollution enhancing the quality of life of the City's residents. It is our understanding that the funds collected through the GoFundMe page could potentially be subject to various gift laws as they are not donations directly to the City. We have identified the following provisions that may be applicable and have found that the following provisions do not prohibit the Commissioner from establishing and running a GoFundMe page for the above-stated purpose. We are requesting that you review our analysis to confirm our findings and to advise if there are any other additional ethics/gift laws that the City should be aware that may affect the City's ability to accept these donations from the Commissioner.

Section 2-613 of the City of Miami Code of Ordinances ("City Code") states that, "Every officer, official or employee of the city, including every member of any board, commission or agency of the city, is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the city." It is our belief that the majority of donations received will be from residents, individuals, and organizations that do not have or anticipate being awarded purchase orders or contracts. Donations received from these residents, individuals, or organizations would not be prohibited under Section 2-613 of the City Code. However, we acknowledge that it is possible that some of the donations received through the GoFundMe page may be from individuals or organizations that have been awarded contracts or might be awarded contracts or purchase orders from the City. Based on the language of Section 2-613, it is our understanding that the Commissioner may accept these donations because they are being given for the use and benefit of the City. Therefore, the Commissioner would not be prohibited from accepting these donations because the funds are intended to be used solely to purchase and install the solar panels throughout the City. Likewise, the City would not be prohibited from accepting the funds from the Commissioner.

Section 2-11.1(e)(3) of the Miami-Dade County Code of Ordinances ("County Code") states that,

A person described in subsection (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 term defined in subsection (b)(1) through (6) or for any person included in the term defined in subsection (b)(1) through (6) to accept or agree to accept from another person or entity, any gift for or because of:

- a. An official public action taken, or to be taken, or which could be taken;
- b. A legal duty performed or to be performed, or which could be performed; or
- c. A legal duty violated or to be violated, or which could be violated by any person included in the term defined in subsection (b)(1).

Section 2-11.1(e)(4) of the County Code further requires that gifts over \$100.00 must be reported. However, Section 2-11.1(e)(2) provides a list of exceptions where the receipt of certain items of value are not considered gifts for purposes of 2-11.1(e). One of the exceptions is for "Gifts solicited by Commissioners on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business." We believe that soliciting and collecting funds for the purchase and installation of the solar panels through GoFundMe falls under that exception and as such, under the County Code, the Commissioner is not prohibited from soliciting these donations nor would the Commissioner be required to file a gift disclosure form.

Section 112.3148(3), Florida Statutes (“F.S.”), states that “A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.” As has been noted, the purpose of this crowdfunding initiative is for the purchase and installation of solar panels throughout the City for the benefit of the City and its residents. As such, this provision of Florida Statutes would be inapplicable to the current situation.

Finally, Section 112.3148(4), F.S., states that “A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.” Generally, the Commissioner is prohibited from accepting any gifts with a value exceeding \$100 from City vendors, lobbyists, or political committees. However, these funds are being accepted on behalf of a governmental entity (the City of Miami) therefore the Commissioner would be able to accept, through the GoFundMe page, gifts in excess of \$100 from City vendors, lobbyists, or political committees.

While it is our belief that the relevant provisions of the State, County, and City laws allow for the Commissioner to accept gifts/donations and transfer the funds to the City to accomplish the above-stated purpose, we would add the following disclaimer language to put all potential donors on notice that there is no quid pro quo for any donation the Commissioner accepts through the GoFundMe page. We propose including the following language and are open to considering any suggestions or edits to the language.

**DISCLAIMER:** By donating to this fund, you acknowledge and understand that acceptance of your donation does not confer to you, directly or indirectly, any special benefit, preferential treatment, special privileges, or exemptions. You further acknowledge and understand that you are making this donation without the expectation of receiving in return any goods or services, directly or indirectly, regardless of the dollar amount donated. Moreover, you affirm that your donation is made in compliance with all relevant Federal, State, County, and City laws, ordinances, and regulations.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact us. Thank you for your time and consideration.

**Xavier E. Albán**

**Assistant City Attorney**

City of Miami Office of the City Attorney

Telephone: 305-416-1830

Facsimile: 305-400-5033

[xealban@miamigov.com](mailto:xealban@miamigov.com)

[PublicRecords@miamigov.com](mailto:PublicRecords@miamigov.com)



**Assistant:** Monique Griffin (305) 416-1810

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