

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, March 27, 2017 10:42 AM
To: Sanchez, Rodzandra (COE)
Subject: Martin Marquez, Candidate for City Council, City of Miami Springs (Sunshine Law) INQ 17-90

INQ 17-90 Marquez

From: Centorino, Joseph (COE)
Sent: Friday, March 24, 2017 9:53 AM
To: 'Martin L. Marquez' <martin@urbanworks.net>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 17-90 Martin Marquez, Candidate for City Council, City of Miami Springs (Sunshine Law)

Mr. Marquez:

You have inquired regarding the applicability of the Sunshine Law to situations that may occur in the future in connection with the attendance of both you and your wife at future meetings, where both you and your wife may be members of the City Council of the City of Miami Springs, depending on the outcome of the upcoming City elections.

Prior to the point at which you and your wife may both be seated on the City Council, the Sunshine Law would not apply to any conversations you may have with your wife. The Sunshine Law, Section 286.011, Florida Statutes, applies only to members of public, i.e., governmental bodies, and would not be applicable to candidates for public office who are not already members of the public board.

In the event that both you and your wife were to be elected to serve simultaneously on the City Council, then the Sunshine Law would apply to both of you and would prohibit private conversations between you regarding matters that would foreseeably come before the board for some type of action. Any such discussion between you would have to be held in accordance with the Sunshine Law, which requires that the meeting occur in a place accessible to the public; that there be reasonable notice of the meeting to the public; and that minutes be taken of the meeting and be kept as public records in the City of Miami Springs.

You and your wife, as fellow City Council members, could engage in communications at a meeting held by another board or public body in compliance with the Sunshine Law, provided those discussions were engaged in publicly and as part of the public meeting and not in a way that would prevent the public in attendance at the meeting from hearing the discussion.

In the event that you and your wife, as fellow City Council members, were to attend a meeting held by residents or homeowners or any persons meeting to discuss issues that could come before the City Council and which is not held in accordance with the Sunshine Law, the opinions under the Sunshine Law suggest that it would be permissible for each of you to speak to the attendees in response to questions posed to you, provided that it were not being used by you or her as an occasion to surreptitiously discuss matters out of the Sunshine. We generally recommend, as a best practice, that when these situations occur involving two or more board members in attendance at such meetings, that any other board member leave the room while a fellow board member is speaking. This would avoid any perception of an attempt to evade the Sunshine Law.

Sunshine Law violations are punishable by the State Attorney as either criminal or non-criminal violations. Generally speaking, criminal misdemeanor violations, punishable by both fines and jail sentences, are usually limited to situations where it can be proven that the violation is intentional. Non-criminal violations, which are punishable only by fines, are usually the consequence where the violation is not knowing or intentional. Past experience has shown that when an elected official is charged with a criminal Sunshine Law violation, the official involved will be suspended from office by the Governor of the State of Florida, pending the outcome of the case.

The other possible consequence of a Sunshine Law is that a civil law suit may be instituted against the City and/or City Council, by a party having standing to do so, that could invalidate a decision made by the City Council, where it could be proven that a Sunshine Law violation occurred during the decision-making process on any given matter.

Sincerely,
Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
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From: Martin L. Marquez [<mailto:martin@urbanworks.net>]
Sent: Friday, March 17, 2017 3:50 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: RE: Sunshine Law and Ethics Question

Dear Mr. Centorino

Your previous advice below was well taken by my wife and I and we have a couple of additional questions.

We will be facing this scenario if we are lucky enough to get elected shortly after attaining office.

There is a general land use public meeting locally we are thinking about attending together as City Council members on our own. It is open to the public and we would announce publically our planned attendance. Since our actions to serve together on City Council would be a first of a kind in Florida we want to make certain that we are treading on solid ground.

If we attend such a public meeting by separate car, can we discuss with the attendees how we feel about a given land use item such as Floor Area Ratios, Density Factors or Height Restrictions as related to our City. We would individually

be discussing with the attendees within earshot of each other and we are concerned that it might be a sunshine violation and therefore wanted to clear it with your department.

If it is a Sunshine Law Violation and we were not aware of it and proceeded to attend and speak at this meeting in such a manner, what would be the repercussions from such a violation. Besides the customary fines, would we be subject to removal from our newly elected office?

Since we are new at elected office and setting a Statewide Precedent we wanted to know all of the variables involved, repercussions and consequences.

Any assistance you could offer would be greatly appreciated.

Thank You in Advance

Martin L. Marquez, City of Miami Springs Candidate For Group II

From: Centorino, Joseph (COE) [<mailto:Joseph.Centorino@miamidade.gov>]

Sent: Friday, March 03, 2017 3:07 PM

To: 'Martin L. Marquez' <martin@urbanworks.net>

Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>

Subject: RE: Sunshine Law and Ethics Question

Dear Mr. Marquez:

You have asked for an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding whether there is any prohibition in the State of Florida Sunshine Law (Section 286.011, Florida Statutes) or in the Miami-Dade County Ethics Code that would prohibit a husband and wife from seeking and serving simultaneously on the same City Council. You have indicated that you and your wife, Kathie Marquez, are candidates for the City of Miami Springs City Council in the upcoming election in Miami Springs. If both of you were to be elected, you would be serving side-by-side on the same elected public body.

The Florida Sunshine Law is one of the strongest open meeting laws in the United States. It is distinguished from the open meeting laws in most states by the fact that it has been judicially interpreted to prohibit private conversations between any two board members regarding any matter that may foreseeably come before the board for action. The only other state that has such a clear prohibition is Colorado. In our experience, the most difficult aspect of the Sunshine Law for elected officials to adhere to is this prohibition against private communications by any two members of a public board. It has been the source of many investigations and a number of prosecutions in this County. Further, the Miami-Dade Ethics Commission often trains elected officials as well as County and municipal advisory board members in the requirements of the Sunshine Law. These trainings have usually included an admonition against two board members creating an appearance of impropriety by having private discussions in public places prior to and during public meetings, even when those discussions do not involve matters coming before the board. The purpose of such recommendations is the protection of the public trust, something that this agency is charged with doing.

There is no prohibition in the Sunshine Law against a husband and wife or two domestic partners, occupying seats on the same public board. As you are aware, the Office of the Attorney General of the State of Florida has issued an opinion stating that there is no *per se* violation of Section 286.011, F.S., where a husband and wife are both elected to a town council. AGO 89-06. However, the opinion emphasized that such individual would remain subject to all requirements of the Sunshine Law. We are in accord with that opinion.

Nonetheless, it must be acknowledged that the simultaneous service of a husband and wife on such a board is likely to create a questionable appearance that would lead some observers to believe that violations of the Sunshine Law were

occurring. Spouses living together and sharing multiple joint activities and responsibilities attendant to the maintenance of a household must, perforce, engage in numerous private conversations out of public view. It would not be unreasonable for citizens of Miami Springs to suspect that during such conversations some references to City business would inevitably become the subject of some conversations, even if only inadvertently. The Sunshine Law is difficult enough for unrelated individuals, who see each other only sporadically, to comply with. The inherent difficulties of two cohabiting spouses to completely avoid such prohibited conversations would be daunting for most couples. In situations where the two spouses vote together on controversial issues, especially if they were the only board members to take the position in question, would create serious appearances of impropriety, even if the spouses had adhered strictly to the letter of the law.

Although there is no prohibition in the County Ethics Code that would prohibit a husband and wife from occupying positions on the same board, such an arrangement could easily create further problems. The County ordinance on Conflicts of Interest in Section 2-11.1(d) of the Code is very strict in establishing a conflict of interest for an elected official where that official “would or might, directly or indirectly, profit or be enhanced” by the action of the Board. If one of two spouses maintaining a joint household with attendant expenses and financial obligations were to have a conflict of interest under this section, it is likely that the other spouse would have the same conflict of interest. Under such circumstances, both spouses would be prohibited from participating in the discussion or voting on the item in question. The mandatory recusal of two members of a five-person City Council, as exists in the City of Miami Springs, would automatically reduce the qualified voting memberships to a bare three-person majority. The recusal or absence of one other member would leave the Council without a majority of voting members. Such an eventuality could only be viewed as detrimental to the public interest in maintaining a healthy democracy.

Based on the foregoing, while it is my opinion that there is no legal prohibition against you and your wife occupying seats on the City of Miami Springs City Council, I must counsel and advise you that such an arrangement is likely to damage the public trust, and is, therefore, highly discouraged.

Sincerely,

Joseph M. Centorino

Executive Director and General Counsel
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From: Martin L. Marquez [<mailto:martin@urbanworks.net>]
Sent: Thursday, March 02, 2017 11:10 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: Sunshine Law and Ethics Question

Hello Mr. Centorino

Hope all is well.

We corresponded a while back regarding an issue I had while on the Miami Springs Planning Board. I have since resigned to run for City Council office to try and effect positive change in that manner since the system appears to have too many loopholes which are being abused.

The question I have at this time is if there is anything in the Florida Sunshine Laws or the Ethics Commission Laws that prohibit a husband and wife from seeking and serving for an elected office in the City of Miami Springs. We checked with the City Charter and it contains no prohibition against a Husband and Wife running and serving at the same time on a City Council. Apparently 49 states in the Union allow such an event and there are a dozen or so husband and wife teams serving on City and Village Councils throughout the country.

To that effect please see the recent write up in the Miami Herald:

<http://www.miamiherald.com/news/local/community/miami-dade/miami-springs/article135814498.html>

At this time we would like to obtain an official determination from your office if there is anything in the Florida Sunshine Laws or Dade County ethics codes that would prohibit my wife and I from running for and if elected serving on the Miami Springs City Council at the same time.

Thanks You in advance.

Kathie and Martin Marquez
305-345-2953