

INQ 0355

a (COE)

Tue 6/17/03 5:18 PM

Linda Karlsson, Acting/Former City Manager of Bay Harbor Islands requested advisory opinions and inquiries pertaining to elected officials and the proper use of their official letterhead.

I will fax her our opinions on 6/18/03 a.m.

ADVISORY OPINION

To: Commission on Ethics and Public Trust
From: Christina Prkic, Staff Attorney
Re: RQO 03-06
Date: February 27, 2003

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Background

██████████ Attorney for the City of North Bay Village, is requesting an advisory opinion regarding any potential conflicts of interest under the Code of Ethics Ordinance as they relate to the solicitation of contributions and the acceptance of unsolicited contributions by elected officials on behalf of 501(c)(3) organizations.

Facts

According to the letter submitted by ██████████ an elected official from the City of North Bay Village seeks guidance as to permissible fundraising activities on behalf of a nonprofit organization. Therefore, ██████████ presents two questions for consideration.

- 1) Is the solicitation by an elected official, or any person acting on behalf of the official, of a contribution to a 501 (c)(3) organization permitted under the Conflict of Interest and Code of Ethics Ordinance?
- 2) Is the acceptance of a contribution by an elected official for a 501 (c)(3) organization, in absence of a proactive solicitation, permitted under the Conflict of Interest and Code of Ethics Ordinance?

██████████ a city council member in the City of North Bay Village, is ██████████ of a nonprofit organization, The North American Zoological Foundation, which operates a camp in Tennessee for autistic children. His wife is an officer of the nonprofit organization as well. Both serve strictly in a volunteer capacity. As President, his responsibilities involve management of the camp and fundraising activities, which consist of soliciting contributions and in-kind donations for the support of the camp. Past contributors have included individuals and entities who appear before the Council of the City of North Bay Village on various land development matters or who are vendors of goods and services to the City. Since fundraising is a necessary component of the nonprofit work, ██████████ would like the Ethics Commission to provide fundraising guidelines in accordance with the Code of Ethics so as to avoid any potential or actual conflicts of interest.

Argument

The Conflict of Interest and Code of Ethics Ordinance does not prohibit ██████████ from engaging in fundraising efforts on behalf of the nonprofit organization and specifically the camp while serving as a City Council member. Firstly, the Ethics

Commission in no way seeks to discourage elected officials from participating in various community service projects. In fact, it recognizes the importance of community service and encourages the support of nonprofit organizations such as charities and other civic groups. However, certain ethical and legal obligations exist by virtue of one's elective office.

The two questions under consideration implicate Section 2-11.1 (e) "Gifts" of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance. As stated in [REDACTED] letter, some contributors currently have or foreseeably have matters that will require official action or require a legal duty to be performed by the elected official, which could create the appearance of a conflict or raise questions of impropriety. Such matters include, but are not limited to, land development permits, procurement matters or zoning applications. Section 2-11.1 (e), defines the term "gift" and sets forth the exceptions to the definition and other prohibitions. Section 2-11.1 (e) (3) states,

"A person described in subsection (b)(1) through (b)(6) shall neither solicit nor demand any gift. It is also unlawful for any person...to offer, give, or agree to give to any person included in the term defined in subsection (b)(1) through (b)(6) or for any person included in the term defined in subsection (b) (1) through (b)(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)."

Under Section 2-11.1 (d), [REDACTED] would be prohibited from participating in or voting on any matter presented to the City Council involving the nonprofit organization. By way of analysis, see RQO 98-14, where a Community Council member, who was also a volunteer board member of her condo association, was prohibited from voting on a matter concerning her condo due to her relationship with the association.

In a more closely related inquiry [02-29], Miami-Dade County Commissioner [REDACTED] who is also President of a not-for-profit agency in Miami-Dade County, was advised that any fundraising efforts by the agency must be broadly based; that solicitation letters on behalf of the agency ought to be signed by other members of the board; that any solicitation activity is done clearly as president of the agency, not as a County Commissioner; and that he could not vote on or participate in matters relating to the nonprofit.

Additionally, Section 2-11.1 (g) provides in part, that no government official or employee shall use his or her "official position to secure special privileges or exemptions." Accordingly, [REDACTED] must avoid using his City letterhead and other government resources to benefit the nonprofit agency. He may not receive in any amount or in any manner, a benefit or gain by engaging in fundraising activities.

Finally, this is the first instance where the Ethics Commission is being asked formally to provide guidelines for fundraising activities by elected officials on behalf of nonprofit

organizations. In RQO 02-42, the Ethics Commission considered the issue of fundraising by County employees on behalf of nonprofit organizations. The opinion, in response to a request from the Assistant Director of Administration in the Aviation Department, found that while employees were prohibited from soliciting gifts for themselves, they could solicit on behalf of charitable organizations, as long as no County resources were utilized and the employee did not solicit from airport contractors or vendors. In RQO 02-70, the Commission addressed the issue of solicitation, acceptance and use of gifts by city officials on behalf of official government business and implemented appropriate guidelines.

Conclusion

Under the Conflict of Interest and Code of Ethics Ordinance, there is no legal conflict which neither prohibits ██████████ from continuing his fundraising activities nor precludes him from accepting unsolicited contributions on behalf of the nonprofit organization. The principal concern though, is whether the official's fundraising activities would create an appearance that he or she is using the elective office to pressure others to contribute, or allowing contributors special access or privileges not afforded to the general public. Based on the foregoing analysis, the Ethics Commission establishes the following guidelines as to the appropriate fundraising activities in accordance with the Code of Ethics. The guidelines address both questions presented, and set forth standards to ensure that such activities are governed with the highest degree of ethics and accountability.

- The solicitation activity shall not be targeted to only specific individuals and entities doing business with the City, seeking to do business with the city, or who have contributed to the elected official's political campaign;
- Elected officials may not coerce government employees, citizens, entities or individuals doing business or seeking to do business with the City, into contributing donations;
- In the interest of transparency and openness, when a contributor appears before the elected official requesting some official action, said elected official should disclose that fact prior to participating in the proceeding;
- Should a matter involving an elected official's nonprofit organization come before the City Council, that official should absent himself or herself from the proceeding or discussion, and may not vote on the matter;
- Elected officials may not engage in solicitation activities during official government-sponsored meetings or events;
- Elected officials may not utilize government resources, such as official letterhead, staff or other resources to further fundraising activities;
- All written correspondence or oral presentations seeking contributions on behalf of the nonprofit should be done in the role of official/member of the nonprofit, not in the role of elected government official;
- Consult with the Ethics Commission or City Attorney regarding further clarification or interpretation of these "best practices" guidelines.

INQ 03-13

To: [REDACTED]
Subject: RE: Ethics Opinion Needed

[REDACTED]

Sorry I haven't responded sooner, but it's been a busy week. I spoke to our staff general counsel about your question and we agree that in your private capacity you can solicit contributions and donations for a non-profit organization; however, the Code of Ethics Ordinance bars you from engaging in any solicitation activities as a public official. What this means is you cannot mention the fact you are a public official, nor can you use official letterhead which indicates your title as a Miami-Dade County public official in your efforts to solicit contributions for the non-profit organization. Finally, you would not be permitted to solicit contributions during public meetings which you attend as a Miami-Dade County public official.

Another concern that we have is the fact that your fundraising efforts will provide you with a direct benefit. Most cases that we have dealt with involve public officials or employees who are seeking funding for non-profits where the benefits to them personally are less direct. I point this out only to remind you that you must be extremely careful how you go about fundraising for your missionary work.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Robert Meyers

[REDACTED]

Subject: Ethics Opinion Needed

Mr. Myers,

Per your request, here is my question as it relates to the Dade County Code on Ethics regarding elected public officials. Thanks for your timely response!

Can a public official (Commissioner, Community Council Member, etc) solicit and/or accept contributions on behalf of a missionary non-profit organization and, in turn, by the nature of being a missionary (having to raise personal support), be paid a FT or PT salary for work performed by the said organization for employment purposes?


Meyers, Robert (COE)

From: Meyers, Robert (COE)
Sent: Wednesday, June 05, 2002 11:13 AM
To:
Subject: Fishing Tournament

I wanted to provide you with a written response to the question you posed to me last week about a letter Commissioner [redacted] wishes to send out as Fishing Tournament Chairman as part of the South Florida Inner-City Games. I understand that the County Attorney spoke to you, after he and I had a chance to discuss this matter, but I thought it was important to provide you with something a bit more formal. In addition to discussing this matter with the County Attorney, I also spoke to the Ethics Commission's general counsel. You advised me that Commissioner [redacted] is planning to use his official letterhead in seeking sponsorship for the fishing tournament. Moreover, Bob Ginsburg advised me that he believed that the last sentence of the letter should be revised and you indicated your office would make these changes.

From my perspective, the question is whether this letter amounts to soliciting a gift, and if it does, is the solicitation permissible under the County Code of Ethics and Conflict of Interest Ordinance. I conclude that Commissioner [redacted] letter whereby he is soliciting sponsors for the fishing tournament is not a violation of the County Ordinance because he is soliciting on behalf of the County for official business. The reason for this conclusion is that this is a County-sanctioned event, the County is co-hosting the tournament, and purpose of the tournament is to reduce juvenile delinquency in our community.

If you have any questions concerning the above, feel free to contact me at your convenience.

Robert Meyers



[REDACTED]

June 27, 2002

[REDACTED]

111 N.W. 1st Street, Suite 220
Miami, FL 33128

Dear [REDACTED]

Thank you for calling a meeting earlier this week with Murray Greenberg and Gerald Sanchez from the County Attorney's Office and me to clarify how the County's Code of Ethics and Conflict of Interest Ordinance applies to you as a County Commissioner and president of JESCA, a not-for-profit agency based in Miami-Dade County. We addressed a number of points, which you have asked me to summarize. As you know, there must be a clear line of separation between your duties as a county commissioner and your responsibilities as the head of an agency located in Miami-Dade County. However, standards should not be imposed upon you that unnecessarily hamper your ability to effectively serve your community as an elected official or hinder your ability to manage your agency. Our conversation covered two major areas: 1) potential voting conflicts and 2) gift solicitations. I recommend the following courses of action:

- 1) Voting conflicts -- To avoid potential voting conflicts, you must not participate in or vote on any matters coming before the Board of County Commissioners or any of its committees involving JESCA. I strongly suggest you absent yourself from any proceeding or discussion when the subject of JESCA is raised.
- 2) Gift solicitation -- You indicated that fundraising is a necessary component of your job at JESCA and you may, on occasion, directly take part in these activities. You advised me that letters of solicitation prepared on behalf of your agency are generally signed by the chairman or vice-chairman of the your Board of Directors and your name does not appear in these solicitation letters. I find this is the prudent approach and when you must solicit gifts or donations to JESCA, you state clearly that you are doing so in your position as president of the organization, not as a county commissioner. Moreover, any campaign mounted by your agency to increasing funding ought to be broadly based. In other words, you would be creating an appearance of impropriety, at the very least, if you targeted your fundraising efforts to those individuals and firms doing business with the County, seeking to business with the County or only those who have given to your political campaign in the past. Finally, I know you understand how important it is to avoid using your County letterhead or other trappings of your office to benefit your agency.

ETHICS COMMISSIONERS

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Gail Dotson
Guillermo Grenier
Elizabeth M. Iglesias
Robert H. Newman

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL



Please use the above as guiding principles but understand that if other circumstances arise that require clarification or an ethics opinion, feel free to contact me at your earliest convenience.

Sincerely,

Robert Meyers

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ARDYTH WALKER
STAFF GENERAL COUNSEL

cc: Murray Greenberg, Esq., Office of the County Attorney
Gerald Sanchez, Esq., Office of the County Attorney

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