

Meyers, Robert (COE)

From: Lievano, Maria (DIST12)
Sent: Friday, November 21, 2003 10:23 AM
To: Meyers, Robert (COE)
Cc: Escar-Mangos, Guerlin (DIST12); Moya, Domingo (DIST12)
Subject: RE: Request for opinion

REQ 03-118

Robert:

Thank you for your response. I was under the impression that this issue had been settled with Guerlin. Earlier this week, you had a conversation with her in which she explained the facts mentioned in the e-mail below. Although you expressed concerns with the perception that the Commissioner may be linked to the Foundation, you understood that neither the Commissioner nor his family were directors or employees of the Foundation. Based on this, you told Guerlin that it would be acceptable for the Commissioner's name to appear on the invitation. You further stated that because the toys were going to the Children's Cancer Clinic, and any left over toys would go to the Kiwanis, it would be acceptable for him to solicit gifts for this charitable cause. After this conversation, Guerlin proceeded with printing the invitations to include the Commissioner's name and the name of the Foundation.

I understand that you now spoke with the Chairman of the Ethics Commission and that your opinion may have changed. However, the facts have not changed. In speaking with Guerlin, you gave her an opinion as to how we should proceed and she relied on that opinion. Now, the invitations have been printed and they are ready to be mailed. Again, I understand that you may be concerned with the perception. However, if we were to proceed with mailing the invitations as printed after consulting with you, will the Commissioner be in a direct violation of the Code of Ethics?

We would appreciate a response as quickly as possible as the event is only a few weeks away and the invitations need to be mailed.

Thank you.

Maria Lievano Cruz, Esq.
Director of Policy and Legislation
Commissioner Jose 'Pepe' Diaz (District 12)
(305) 375-4343
Fax (305) 372-6109

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-----Original Message-----

From: Meyers, Robert (COE)
Sent: Thursday, November 20, 2003 2:08 PM
To: Lievano, Maria (DIST12)
Subject: RE: Request for opinion

Maria,

I had an opportunity to confer with the Chairman of the Ethics Commission this morning and I wanted to provide you with a response as quickly as possible. I understand that Commissioner Diaz wants to host a toy drive and plans on inviting individuals to a luncheon at the Doral, encouraging them to bring toys with them. The Diaz Family Foundation will make arrangements for the toys to be distributed to needy children. Furthermore, I was advised that the Diaz Family Foundation is responsible for collecting the money for those who wish to attend the luncheon and to coordinate the luncheon and the toy distribution. Additionally, if there are any extra toys, I was advised that Commissioner Diaz would partner with a local Kiwanis chapter to make sure that all toys would be delivered. I was informed by Gerlin that, despite the name of the Foundation, neither Commissioner Diaz nor his family are directors or employees of the Foundation. However, Commissioner Diaz was involved in the formation of the Foundation.

County law prohibits elected officials from soliciting gifts unless these gifts are solicited in performance of their official duties in conducting official County business. Under limited circumstances, the Ethics Commission has found that a general solicitation by a County Commissioner for purposes of soliciting gifts for a charitable cause or to benefit the community-at-large would be permitted as long as there was no special gain to the elected official and the appeal for

donations, contributions, etc. was broadly-based. The difference in this scenario however, is that the Foundation responsible for holding the event and collecting monies for the luncheon is linked to the Commissioner. I realize that the Commissioner does not take an active role in the Foundation, but the perception will be created that the Commissioner, if he is allowed to solicit for this toy drive/luncheon in his official capacity, will somehow benefit his private foundation. The rule that allows elected officials to solicit gifts in their official capacity for official County business does not apply to this toy drive. Therefore, I would urge the Commissioner not to take part in the invitation phase of the event.

Practically speaking, this means that someone other than Commissioner Diaz should send out the invitations and that his name should not be mentioned in connection with the event. As I understand it, even if the name of the Foundation was not identified on the invitation, checks for the luncheon are supposed to be made out to the Diaz Family Foundation.

Another option, of course, would be to change the name of foundation to avoid the appearance of impropriety. A final option would be to have another foundation or charitable organization take the place of the Diaz Family Foundation, enabling the Commissioner to play a role in soliciting for this event. Lastly, any soliciting for this luncheon must not be limited to County vendors, prospective vendors, lobbyists or campaign contributors.

If you have any questions concerning the above, please contact me at your convenience.

-----Original Message-----

From: Lievano, Maria (DIST12)
Sent: Friday, November 14, 2003 3:05 PM
To: Meyers, Robert (COE)
Cc: Moya, Domingo (DIST12); Diaz, Jose "Pepe" (DIST12)
Subject: Request for opinion

Mr. Meyers:

The Commissioner would like to host a toy drive/luncheon. The cost of the luncheon is \$40.00 per person. The toys will go to the Jackson Memorial Children's Cancer Clinic and any proceeds left over will go to the Diaz Family Foundation (501(c)(3)). Please let me know if the Commissioner can send invitations to local businesses.

Maria Lievano Cruz, Esq.
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Commissioner Jose "Pepe" Diaz (District 12)
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