

Biscayne Building
19 West Flagler Street
Suite 220
Miami, Florida 33130
Phone: (305) 579-2594
Fax: (305) 579-2656

Miami-Dade County Commission on Ethics and Public Trust

Memo

To: Mike Murawski, Robert Meyers, Christina Prkic
From: Karl Ross
Date: February 26, 2016
Re: K05-40 STEPHEN CYPEN, et. al.

In response to the complaint filed by Surfside resident Jay Senter alleging town officials, led by Town Attorney Stephen Cypen, violated the Sunshine Law in the course of recruiting Jeff Smolansky to serve as town manager, this office interviewed Mr. Smolansky and four of the town's five commissioners. Mayor Tim Will was not interviewed since he was named in the complaint as an alleged co-conspirator along with outgoing Town Manager Eduardo Rodriguez. In his complaint, Mr. Senter alleges the aforementioned officials circumvented the Sunshine Law by taking it upon themselves to search for a replacement for Rodriguez and, after selecting Mr. Smolansky, to push for his approval at a July 13, 2004, commission meeting.

Based on interviews with commissioners Stephen Levine, Frank MacBride, Ruben Coto and Oreste Jimenez, as well as with Mr. Smolansky himself, this office has established the following with regard to the search process:

- Cypen, Will and Rodriguez initiated a search for a replacement for Mr. Rodriguez without any formal authorization by the town commission.
- Cypen, Will and Rodriguez agreed to recruit Mr. Smolansky for the town manager's job and actively supported his candidacy.
- Three of the four commissioners stated that in conversations with Rodriguez he recommended Mr. Smolansky as his successor. Only commissioner MacBride said he was not contacted in this regard.

- One of the commissioners, Coto, stated he also discussed Mr. Smolansky's qualifications with Town Attorney Cypen who touted his credentials.
- Neither Cypen nor Rodriguez mentioned any other candidate besides Smolansky when discussing the matter with commissioners.
- Commissioner Jimenez had dinner with Mr. Smolansky approximately two weeks before the commission vote, a meeting both parties say was organized by Rodriguez.

The findings, thus far, suggest that Messrs. Cypen, Will and Rodriguez acted as a de facto search committee and – prior to consulting the full commission in a public forum – agreed to put forward the candidacy of Jeff Smolansky to serve as interim town manager. Cypen and, in particular, Rodriguez actively lobbied commissioners on his behalf, according to statements provided by the town commissioners. Three commissioners said they felt both officials were “handling” the selection.

There is no indication that Mayor Will discussed the matter with any of his commission colleagues. It is possible, however, that Cypen and Rodriguez, as staff, violated Fla. Statute 286.011 if they ceased to function in a staff capacity and assumed responsibilities normally assigned to elected officials.

As noted by the complainant, Surfside's municipal charter in Section 12 vests the commission with powers that include appointing a town manager. This is one of the commission's most important duties, as delineated by the charter.

Under Fla. Statute 286.011, it is possible for staff to violate the Sunshine Law if those members of staff acted in a capacity reserved for elected officials. According to the 2005 Government in the Sunshine Manual prepared by the Florida Attorney General's office, the Sunshine Law applies “when a staff member ceases to function in a staff capacity and is appointed to a committee which is delegated authority to make recommendations to a board or official.” (See page 12.) This applies to “search and screen” committees, whether appointed by formal or informal means.

It would seem that in order to find that Messrs. Rodriguez, Cypen and/or Will violated the Sunshine Law, the state attorney's office must determine whether these individuals acted within the scope of their normal duties. If it is found that the above-named officials acted as a “de facto search committee,” the Sunshine Law would appear to apply, as discussed with Pat Gleason of the attorney general's office.

It should further be noted that, according to Attorney General's Opinion 75-37, “all phased of the decision-making process must be conducted in the sunshine.” That does not appear to be the case, as Mr. Smolansky's candidacy arose as the result of private deliberations between Messrs. Cypen, Will and Rodriguez.

This investigator did not contact the aforementioned officials in case the Miami-Dade State Attorney's Office decides to pursue them as targets in a criminal inquiry. This

office is prepared to cooperate with any subsequent inquiry, should assistance be requested. All investigative notes and materials can be provided upon request.