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Miami-Dade County Commission on Ethics and Public Trust

Memo

To: Mike Murawski, independent ethics advocate
From: Karl Ross, investigator
Date: Oct. 31, 2012
Re: K12-147 Miami Gardens Mayor Oliver Gilbert (AvMed)

Background:

Pursuant to a tip received on the ethics hotline, an investigation was opened Sept. 26, 2012, into allegations that Miami Gardens Mayor Oliver Gilbert may have exploited his position – or attempted to exploit his position – with respect to a pending contract renewal for healthcare services. Information provided anonymously suggested that Gilbert sought a private meeting with representatives of AvMed Health Plans in order to pressure the insurer to include gastric bypass procedures in the city's healthcare plan. Such procedures were not covered at the time. It was further alleged he may have used this opportunity to solicit charitable contributions from the company, which was seeking to renew its \$3.2 million contract.

Findings:

An item on the Sept. 26, 2012, Miami Gardens City Council meeting agenda (L-2) is a resolution authorizing the city manager to renew a contract with AvMed Health Plans in the amount of \$3,285,359. It is the final item on the agenda. AvMed has been the city's incumbent vendor of healthcare services since October 2006, and its contract has been renewed on an annual basis since that time. The resolution stated the city had negotiated a rate reduction of 1.5 percent with AvMed for its HMO plan and an 8.5 percent increase for its POS plan. Based on "the favorable rate that AvMed is proposing," staff recommended the council approve the contract.

On Oct. 15, 2012, COE interviewed Patricia Nelson, regional head of strategic accounts for AvMed, to see if she could corroborate information that Mayor Gilbert held a meeting with her and another company executive just prior to the September 26 city council meeting and that at that meeting he sought to expand coverage of the city's healthcare plan to include gastric bypass procedures.

Ms. Nelson confirmed that she and account executive Lourdes Abraham met with Mayor Gilbert and City Manager Danny Crew at 5 p.m. on September 26 – two hours prior to the council meeting. Nelson said that during the meeting, Mayor Gilbert stated that he wanted the city's coverage to include gastric bypass surgery. Nelson advised that the procedure is still considered "experimental" by many in the industry and is usually excluded from most coverage plans. She said the mayor stated that he had undergone a gastric bypass procedure and that "it saved my life."

Nelson said Mayor Gilbert told AvMed representatives that "the employees want this," and stated that unless it was covered he would ask the city manager to withdraw the renewal item and "put the contract out to bid." He further stated that he had pulled the item from the consent agenda. Nelson said she and Abraham explained to the mayor how difficult it is to get approval for the procedure, but agreed to supply price estimates. She said that on October 11, Abraham sent a quote to the city manager and it showed that including gastric bypass would increase the city's premium costs for 414 employees covered by AvMed by 3 percent.

Ms. Nelson said that during the council meeting later that evening, Mayor Gilbert stated on the dais that he had "pulled the item" from the consent agenda but that, because AvMed representatives "answered my questions," he felt the matter should go before the council for a vote. The item was approved. Mayor Gilbert did not disclose the nature of the questions to the public at the time of his remarks.

Asked whether the mayor made any other requests during the September 26 meeting, Ms. Nelson stated that the mayor did request funding for one or two charitable causes. "I don't recall what it was. It might have been more than one," she said. She said that Abraham would have more information, but stated that one was called "Pink Week" and had something to do with breast cancer awareness.

Ms. Nelson said she got a call from a woman named Felicia Robinson shortly after the council meeting, perhaps the next day seeking a contribution for "Pink Week," a breast-cancer awareness organization she was involved with. She said she would check with Abraham, who was out of the office and get back to COE.

In follow-up email correspondences, Ms. Nelson advised that AvMed, at the urging of Mayor Gilbert, had been contacted by other council members representing charitable causes. This included Councilwoman Felicia Robinson and Vice Mayor Lisa Davis, who requested a contribution on behalf of diabetes awareness. Nelson said that \$500 had been donated to the charity at the request of Vice Mayor Davis.

Ms. Nelson further advised – in response to a request for information from COE – that her “research team” had found that Mayor Gilbert had received AvMed coverage through the city since 2009. She further advised that none of the claims against his policy related to weight-loss surgery, suggesting that if Mayor Gilbert had undergone such a procedure that it was paid for independently of his city coverage.

On Nov. 9, COE received a follow-up phone call from AvMed's general counsel, Steven Ziegler, in response to a request for copies of any checks issued by AvMed as a result of the meeting with Mayor Gilbert back on Sept. 26. He stated he did not believe AvMed issued any checks as a direct result of the meeting with Gilbert, stating Gilbert made only a general request for support on behalf of fellow council members. “There wasn't any specific request from the mayor,” he said.

Mr. Ziegler said that a couple of days later, Vice Mayor Lisa Davis did call and request support for a diabetes awareness program and that AvMed did contribute \$500 to that cause. He said company representatives also received a call at or about this time from somebody on behalf of Councilwoman Felicia Robinson requesting support for “Pink Week.” He said no monetary support was given, but AvMed did provide a speaker to talk about stress-reduction for a Pink Week activity. He said it was not the councilwoman who called but somebody else. He said that neither of the account representatives involved in Miami Gardens could recall her name.

Mr. Ziegler stated AvMed executives did find it “unusual” Mayor Gilbert would approach them about inclusion of the gastric-bypass procedure, but that this was viewed as something that might happen in a “smaller” city such as Miami Gardens where the elected officials are more involved than in larger jurisdictions. He noted that Mayor Gilbert did not specifically request coverage of the procedure for himself but rather on behalf of other employees given his positive experience.

Analysis:

The issue raised by the allegations is whether Mayor Gilbert, as a result of his intervention with AvMed, violated Section 2-11.1 of the ethics code as it relates to subsection (g), *Exploitation of official position prohibited*, which states in applicable part that “No person ... shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others ...”

The circumstances described above seem to suggest that Mayor Gilbert sought to use his influence as mayor to pressure AvMed to include a costly and somewhat controversial procedure in its coverage to city employees. Instead of raising the issue in a public setting such as the city council meeting scheduled later that evening, Mayor Gilbert sought a private audience with the AvMed account executives attended only by himself and City Manager Danny Crew. Manager Crew, it was learned, arranged the ex-parte meeting at Mayor Gilbert's request.

At the meeting, Mayor Gilbert allegedly told AvMed representatives that he had “pulled the item” from the consent agenda and that unless AvMed were to include

gastric bypass procedures in its city coverage he would ask the city manager to withdraw the item from the agenda and “put the contract out to bid.” In effect, he was telling AvMed that it could risk losing its \$3.2 million contract with the city unless they sought to include the procedure.

If it is assumed that Mayor Gilbert did, in fact, have the procedure, then it would be difficult to argue that he was exploiting his official position to secure a benefit for himself. This leaves open the possibility that Mayor Gilbert may have been attempting to exploit his position by seeking to expand coverage to benefit other city employees. The hotline caller did provide a name of a “young lady” who works for the city who the mayor was allegedly trying to help get the procedure. The individual, whose name will not be included, has not been interviewed at this time. However, if AvMed did offer the procedure, it would be available to all covered employees.

Raising further questions about Mayor Gilbert’s conduct was his alleged solicitation of charitable contributions from a city vendor under the circumstances described above, making it very difficult for AvMed executives to refuse. If such a practice were to be condoned or found permissible, then it could set an unfortunate precedent and foster an environment where vendors are routinely solicited for cash from elected officials every time a contract comes before the governing body for approval.

It is not uncommon, of course, for vendors to field requests from elected officials to donate to charitable causes or political campaigns. Doing so while a contract renewal is pending seems to be, in the very least, opportunistic. In this case, it should be noted, however, that AvMed executives claim that none of the support given to local causes could be directly attributed to the meeting with Mayor Gilbert. They stated, furthermore, that the mayor did not make “any specific requests.”

Conclusion:

While it was alleged that Mayor Gilbert, as a result of the foregoing, sought to secure a benefit for a third-party, it would be difficult to prove exploitation since the benefit – in this case- coverage of a costly but popular procedure –would be available to any and all of the city’s more than 400 covered employees. That the mayor was not seeking this benefit for himself weighs heavily in the final analysis. What can be said is that the mayor’s actions lacked transparency and perhaps would have been more suitably discussed during the council meeting later that evening.

Lastly, it should be noted that while the contract was pending renewal at the time of the meeting with AvMed executives, the contract was not out for bid and would not be subject to the Cone of Silence provisions of the county ethics code.

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