

Biscayne Building
19 W. Flagler St., Suite 820
Miami, FL 33130
Phone (305) 579-2594
Fax (305) 579-0273

**Commission on Ethics &
Public Trust
Miami-Dade County**

Memorandum

To: Joseph Centorino,
Executive Director

From: Christina M. Seymour,
Auditor

Michael Murawski,
Advocate

Date: May 25, 2012

Re: K12- 033 – Miami-Dade County Commissioner Candidate District 5 – Campaign Financing

BACKGROUND:

In March of 2001, the Miami-Dade County Board of County Commissioners adopted Ordinance No. 01-39 (the Ordinance) relating to campaign financing reform, which is codified in Miami-Dade County Code §12-22. The Ordinance is intended to make the political process more accessible to candidates who run for the office of County Mayor or County Commissioner by providing eligible candidates with public financing from the Election Campaign Financing Trust Fund (the Fund).

The Ordinance establishes the eligibility requirements that a candidate must meet in order to receive public financing from the Fund. For the office of County Commissioner, each candidate who satisfies these requirements may be eligible for a maximum contribution of \$75,000 in the primary election, and an additional \$50,000 if a run-off election occurs. For the office of Mayor, each candidate who satisfies the eligibility requirements may receive \$300,000 for the primary election and an additional \$200,000 if the candidate is in a run-off election.

Additionally, the Ordinance requires the Commission on Ethics & Public Trust (COE) to conduct post-election audits ninety (90) days following the date of the election for those candidates who received public financing from the county. This is in keeping with both the requirements of §12-22 (f)(6) of the Code of Miami-Dade County and Florida Statute §106.141 (4), which require that the candidate dispose of any surplus funds remaining in the campaign account within 90-days of the election date.

CANDIDATE QUALIFYING INFORMATION - COMMISSIONERS:

If applying for public funding from the "Election Campaign Financing Trust Fund," there are several requirements a candidate must meet in order to be eligible to receive public funds from the election trust fund. If applying for public funding, a candidate for a District commission¹ seat must:

1. File the Public Financing Acknowledgement Statement (MD-ED 11).
2. File the Irrevocable Statement and Application for Election Campaign Financing Trust Fund for Initial and Runoff Elections (MD-ED 13) no later than ninety (90) days after opening a campaign account or thirty (30) days before the first day of qualifying with the Supervisor of Elections, whichever shall come first.
3. Submit the Contributions List for Application for Election Campaign Financing Trust Fund (MD-ED 15) before or at least twenty (20) business days prior to the first day of qualifying for office after applying for public funding (April 24, 2012).
4. Receive the required number of contributions between \$100 and \$500 from the required number of qualified contributors in the District (at least 300 but no more than 360 contributors).
5. Limit the loans or contributions from the candidate's personal funds to twenty-five thousand dollars (\$25,000).
6. Attend, along with the Campaign Treasurer, a seminar conducted by the Miami-Dade County Ethics Commission regarding state and local campaign financing laws, which shall be completed prior to the receipt of contributions from the Fund.

PURPOSE FOR COE INQUIRY OF CANDIDATE CARLOS MUNOZ FONTANILLS - COUNTY COMMISSION DISTRICT 5

On February 28, 2012, the Miami-Dade County Elections Department sent the COE a list of all 2012 mayoral and county commission candidates who filed an "Irrevocable Statement and Application for Election Campaign Financing Trust Fund." At the time, there were only five (5) candidates who had filed paperwork seeking public funding for the candidate's intended office (i.e., County Mayor or County Commissioner for the August 14, 2012 Primary Election.)

¹ Similar requirements apply to Mayoral candidates who seek campaign financing from the public trust fund; however, the criterion for quantity and dollar thresholds of raised contributions are higher for Mayoral candidates.

For each of the five (5) candidates who sought public funding for their 2012 election campaign from the Miami-Dade County Campaign Financing Trust Fund, the COE auditor reviewed the Campaign Treasurers Reports filed by each candidate. The purpose of the review of the campaign reports was to determine if these candidates were close to the required minimum number of raised contributions as well as the minimum dollar amount of contributions required to be raised by April 24, 2012 in order to be eligible for public campaign funding.

Based on review of the five (5) candidates' campaign reports filed with the Miami-Dade County Elections Department, one candidate in particular,² Dr. Carlos E. Munoz Fontanills, candidate for Miami-Dade County District 5 Commissioner, raised \$6,650 and also spent \$6,486.39 as of December 31, 2011. Thus, it appeared possible that Dr. Carlos Munoz Fontanills could raise \$30,000 in campaign contributions by April 24, 2012, which was the deadline for filing the Form MD-DE 15, "Contribution List for Application of Election Campaign Financing Trust Fund," and potentially qualify to receive public campaign funding from Miami-Dade County.

Additionally, the COE auditor reviewed the expenditure detail of Candidate Munoz Fontanills' Campaign Treasurer Reports and noted that the many of the campaign expenditures' documented purpose contained the word, "donations," and appeared to be paid to nonprofit agencies. If in fact a candidate uses their campaign contributions to donate money to a non-profit organization, it would be a violation of Florida Statute Section 106.08(5)(c), which states:

"Candidates, political committees, affiliated party committees, and political parties may not make contributions, in exchange for political support, to any religious, charitable, civic, or other cause or organization established primarily for the public good."

Furthermore, Candidate Munoz Fontanills' Campaign Treasurer Reports noted two (2) petty cash withdrawals of \$500 each on the dates of December 18, 2011 and December 25, 2011. The election laws of the State of Florida address the establishment and use of petty cash funds, both during the campaign qualifying period and after the candidate becomes a qualified election campaign candidate. Florida Statute 106.12, "Petty Cash Funds Allowed," specifies that a candidate may only withdraw \$500 per quarter, during the qualifying period, for the purpose of providing a petty cash fund. Further, the Florida statute states what are allowable petty cash expense items, which are office supplies, transportation expenses, and other necessities. Therefore, the candidate may have violated this election law statute as Candidate Munoz Fontanills withdrew \$1,000 in the last calendar quarter of 2011.

² The other four (4) candidates who were seeking public funds from the Elections Trust Fund had only raised a nominal sum of campaign contributions as of the February 28, 2012. Therefore, the COE did not have many campaign reports to review for the other four (4) candidates.

INTERVIEW OF CANDIDATE CARLOS MUNOZ FONTANILLS

On Wednesday, April 18, 2012, COE Investigator Breno Penichet and the COE Auditor met with the candidate, Dr. Carlos Munoz Fontanills, and Mr. Jorge de Armas, who served as an interpreter for Dr. Munoz Fontanills. The COE Investigator audio taped this interview and had Candidate Dr. Carlos Munoz Fontanills swear under oath that he would answer the questions truthfully, to the best of his knowledge. The candidate agreed and was sworn to tell the truth during our interview.

The purpose of our meeting was to have the candidate, Dr. Carlos Munoz Fontanills, explain the purpose and nature of certain campaign expenditures, which the COE auditor flagged as questionable, based on the campaign treasurer reports filed with the Miami Dade County Elections Department. The COE auditor prepared a list of questions and also made photocopies of the applicable pages of the candidates' campaign treasurer reports to assist Dr. Carlos Munoz Fontanills in recalling the detail of the reported campaign expenditures.

The COE auditor's inquiry was two-fold in nature and focused on the following: (1) campaign expenditures classified by Candidate Munoz Fontanills as "donations" or "contributions" to various Cuban exile organizations and nonprofit agencies; and, (2) those campaign expenses documented as "petty cash" or "various miscellaneous" on the CTRs filed with the Miami-Dade County Elections Department.

(1) EXPLANATION OF "DONATIONS:"

Below are the items which the COE requested for Dr. Fontanills, District 5 Commission candidate, to explain what specifically these campaign expenditures were made for, given the notations on the CTRs make the campaign expenses appear to be donations made in exchange for political support:

- 10/23/11 - \$100 to "Federacion Mundial de Presos" politicos de Cuba public.
- 10/27/11 - \$100 to "Ninos de la Luz Foundation" – the candidate wrote "public relations campaign."
- 11/02/11 – \$100 to "Junta Patriotica Cubana."
- 11/05/11 - \$150 to "Partido del Pueblo Cubano Orto."
- 12/03/11- \$30 to "Partido del Pueblo Cubano Orto."
- 12/19/11 – \$300 paid to Versailles Restaurant as a "Contribution Christmas dinner for electors and contributors."

The candidate explained that each of the above campaign expenses related to a an event where the candidate purchased tickets to a dinner, breakfast, meeting, etc. in order to attend the particular function. Because the candidate's native language is Spanish and not English, he inadvertently wrote "donation" as the purpose of these campaign expenses on the CTR to explain the purpose for the functions he paid to attend. The COE auditor explained to Candidate Fontanills that he should have written "tickets purchased for event," as opposed to "donation," to properly reflect that he was not making donations to political groups, etc. Candidate Fontanills agreed and stated that he now understands the proper way to document this type of campaign expense on the treasurer's reports. Therefore, none of the campaign expenses cited by the COE auditor were in fact 'donations' to nonprofit agencies. **NO EXCEPTIONS NOTED.**

(2) "PETTY CASH" WITHDRAWALS and "VARIOUS EXPENSES"

The COE auditor noted that the candidate made two (2) petty cash withdrawals of \$500 each on the dates of December 18, 2011 and December 25, 2011. As stated previously, the election laws of the State of Florida address the establishment and use of petty cash funds, both during the campaign qualifying period and after the candidate becomes a qualified election campaign candidate. Florida Statute 106.12, "Petty Cash Funds Allowed," specifies that a candidate may only withdraw \$500 per quarter, during the qualifying period, for the purpose of providing a petty cash fund.

When questioned about the petty cash withdrawals, Candidate Fontanills stated that he misunderstood the Florida election laws as it pertains to petty cash funds. Additionally, the candidate stated that he was sent a letter from the Miami-Dade County Elections Department regarding the excess petty cash withdrawals documented on the candidate's original Q4-11 Campaign Treasurers Report (CTR). Specifically, on February 8, 2012, the Elections Department mailed an "Incomplete Notice" to the campaign treasurer, Mr. Arturo N. Ramos, and copied Candidate Fontanills. The notice informed the campaign of its noncompliance with Florida election laws, specifically the "Petty Cash Withdrawn Amount," and informed the Fontanills' campaign that it had seven (7) days to submit an amended campaign report addressing these matters. *{See Exhibit A for "Incomplete Notice" sent to the campaign.}*

On February 15, 2012, the campaign filed an amended Q4-11 Campaign Treasurers Report (CTR) with the Miami Dade Elections Department. The COE auditor reviewed the amended CTR and noted that one of the \$500 petty cash withdrawals was deleted from the amended CTR. Also, the candidate wrote a letter to the Supervisor of Elections explaining his misunderstanding of the election laws for setting up a petty cash fund. Based on the COE's inquiry and review of the documentation, it is concluded that the candidate made an honest mistake. Further, as directed by the Miami-Dade County Elections Department, the candidate filed an amended CTR to correct the error. **NO EXCEPTIONS NOTED.** *{See Exhibit B for amended CTRs and a letter from Dr. Carlos Munoz Fontanills to the Elections Department.}*

Lastly, the COE auditor inquired of Candidate Fontanills as to an expenditure made on December 31, 2011 for \$1,066.87, which was documented on the CTR as “various miscellaneous expenses.” The COE auditor requested for Candidate Fontanills to explain what specific types of campaign-related expenses were made with the \$1,066.87 check payment. The candidate explained that the Elections Department also cited this same expense item in its letter dated February 8, 2012 and informed the candidate that a detailed purpose is required to be documented on the treasurer’s report. *{See Exhibit A for “Incomplete Notice” sent to the campaign.}*

On February 15, 2012, the campaign filed an amended Q4-11 Campaign Treasurers Report (CTR) with the Miami Dade Elections Department. The COE auditor reviewed the amended CTR and noted that for the \$1,066.87 “various” expense, an explanation of the purpose of the campaign expense was added, which stated: “gifts, postcards, flowers, food for senior’s party, and paper.” Based on the COE’s inquiry and review of the documentation, it was an honest mistake on the part of the candidate, and as directed by the Miami-Dade County Elections Department, the candidate did file an amended CTR to correct the error. **NO EXCEPTIONS NOTED.** *{See Exhibit B for amended CTRs and a letter from Dr. Carlos Munoz Fontanills to the Elections Department.}*

CONCLUSION:

Based on review, analysis and interview of Candidate Carlos Munoz Fontanills, the COE concludes that the candidate did not use his campaign funds for inappropriate expenditures. Also, the Miami-Dade County Elections Department letter of instruction to the candidate required that the candidate amend his Campaign Treasurer Reports (CTR) to properly account for campaign expenditures. In response, the candidate filed an amended CTR with the Miami-Dade Elections Department to comply with the election laws. Therefore, the COE concludes that Candidate Carlos Munoz Fontanills did not intentionally violate the campaign election laws of the State of Florida and thus, no further action will be taken by the COE.

ATTACHMENTS

1. Exhibit A – “Incomplete Notice” sent to the Candidate by Miami-Dade Elections
2. Exhibit B – Amended Campaign Treasurers Report - Q4-11 (4th quarter 2011)