



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

Case No.: K13-137	Case Name: Liebman	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Philip Stoddard	Subject(s): Josh Liebman	Oct. 29, 2013	Dec. 9, 2013

Allegation(s):

Complainant Philip Stoddard (Stoddard), who is mayor of South Miami, alleges that during a scheduled public meeting of the South Miami City Commission, subject Josh Liebman (Liebman) exploited his unique position as Vice Mayor and Commissioner to endorse a candidate for the upcoming election for Commissioner for the City of South Miami.

Relevant Ordinances:

Complainant alleges that subject violated the Miami-Dade County Conflict of Interest and Code of Ethics ordinance Sec. 2-11.1 (g): *Exploitation of official position prohibited. No person [covered by this provision] shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.*

Complainant alleges further that subject violated the South Miami Code of Ordinances Sec. 8A-3: *Fair and equal treatment. (a) Impartiality. No official or employee shall request, use or permit the use of, any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.*

Investigation:

Interviews

Document/Audio/Video Review

Complainant supplied a flash-drive copy of the relevant portion of the Oct. 15, 2013, City of South Miami Commission meeting, taken from the video archive of the meeting which is available at the city's website. Complainant also provided a transcript of the relevant portion of the same meeting; the transcription below was corrected of minor errors by this investigator, using the archived video of the same meeting from the City of South Miami's website.

Analysis

At a regularly scheduled South Miami City Commission meeting on Oct. 15, 2013, at about 8:37 p.m., Vice Mayor Liebman during his commissioner's comments time explicitly endorsed declared commission candidate Donna Shelley (Shelley). (The election is Feb. 11, 2014). His comments were broadcast on the city's normal broadcast channel for airing commission meetings, and can be viewed at the city's website in its archive of past commission meetings.

A transcript of his remarks follows:

Vice Mayor Liebman: "And in reference to the government shutdown, I think the community really needs to ask themselves, 'If our government shut down, would the city be better off?' And based on that answer, you need to consider running for office, because right now, we have two incumbents and Miss, Commissioner Newman has made it clear a number of times that she is not running, and the only other person is Donna Shelley that is declared, and thought Miss Donna Shelley would be the first person to declare, and she declared for this seat and I'm endorsing Donna Shelley. You can look at this commission. It's not a very diverse commission. We only have one woman on this commission, and Commissioner Newman has already mentioned that she's not running. We certainly need diversity up here, and I'd support Donna Shelley regardless, but she just happens to be a woman, and everyone knows I ran on diversity. She's also Harvard and MIT educated; she's served on every board, and she was a grant writer for the city. I encourage everyone to take your time to get to know her. If you can help her campaign, fundraise, it would be much appreciated. She is certainly what this city needs.

Commissioner Harris: "Are you supporting me? I'm running."

Vice Mayor Liebman: [After a pause]: "I want to announce a couple of events, because – [laughter from the commission and audience] I've spoken with a couple candidates. Anyone who would like to speak with me, as Commissioner Harris mentioned, we are very approachable. My door is always open, so if anyone's interested in running, I would be more than happy to speak with you. ..."

There is no further context to consider, as Liebman's comments immediately before and after the ones transcribed above were on unrelated content.

Interviews

Josh Liebman, Vice Mayor of South Miami, on December 9, 2013, about 1:45 p.m., by telephone.

Liebman assumed before being told that the complaint was about his campaigning from the dais. He stated that one of his goals in public life has been to encourage literal diversity as well as a diversity of opinions on the commission, and to encourage “qualified candidates” to run for office and participate in other civic activities. He said this to explain one reason why he spoke in favor of candidate Shelley, who, if elected, likely would be the only woman on the commission. He also spoke of her qualifications from the dais, essentially confirming his dedication to encouraging qualified candidates to run. This investigator told Liebman that it may have been his explicit endorsement of Shelley’s candidacy that pushed his comments across the acceptable boundary.

On the specific complaint, Liebman did not deny the record of his comments, but said that he had previously believed that while on the dais he was only prohibited from addressing matters from which he could personally benefit, but that he was free to endorse Shelley since he would not personally benefit from her election. He then said he has never considered himself a career or professional politician but rather something of a novice in the realm, and acknowledged that he was no doubt unfamiliar with all of the rules that apply to elected officials. He said, “I don’t know all these things; I guess I’m learning the hard way.” He said, “I’m open to advice” about how to be a better public servant.

Liebman noted that in the same moments on the dais when he voiced his support for Shelley, Commissioner Harris stated that he, too was running for office. Liebman wondered if that also constituted a violation under the same codes. It should be noted that Harris only stated the fact that he was running, but did not appeal for support or make any self-promotional comments of an electioneering nature.

Jim Waldo, senior vice president and general manager for Atlantic Broadband for the Florida region, Friday, November 22, 2013, about 10:45 a.m, by telephone, and subsequent conversations.

Waldo said Channel 77 is their general government access channel for all client cities, but each city is segregated so that residents only receive government broadcasts for their city alone. Residents outside the city can’t see South Miami government broadcasts.

Waldo said there are about 1,100 households in South Miami who can access the city commission broadcasts on the government access channel (77).

Waldo said the city has full control over the broadcast schedule including rebroadcasts. “What they do with it up to them.” The city has its own department, owns its own cameras, etc.

He said there is no way to determine how many people actually watch any particular broadcast.

Steven Alexander (Alexander), City Manager of South Miami, November 26, 2013, by e-mail, after several exchanges.

Through the course of several e-mail exchanges with Alexander and Waldo, it was determined that the city controls how often a particular City Commission meeting is rebroadcast on the Channel 77 government access channel for Atlantic Broadband. Alexander wrote that he was finally able to determine from Dennis DuBlois of a company called International Data Consultants that South Miami City Commission meetings are recorded and placed in a queue with other recorded meetings and rebroadcast automatically. Thus, only an estimate of the number of rebroadcasts is possible. DeBlois told Alexander that in the 41 days after October 15 (equaling 984 hours), the queue of meetings totaled 55.5 hours, which suggests that during those days, that particular meeting was rebroadcast 18 times, about every 2.3 days.

Conclusion(s):

There is no disputation of the facts presented herein. This investigator was present at the meeting in question, and personally witnessed the comments by Liebman portrayed in the video and the transcript above, and can personally vouch for their accuracy.

A maximum of about 1,100 households in South Miami have the ability to view a City Commission broadcast on the city's government-access channel. Including the initial live broadcast, residents would have had approximately 19 opportunities to see the broadcast in question during the following 41 days.

All that remains is a determination as to whether the comments by Liebman constitute a violation of the county and city codes as alleged.