



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Sylvia Batista

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| Case No: K14-097 | Case Name: Mayor Diaz legal fees | Date Open: | CASE |
| Complainant(s): Ralph Ventura, Sweetwater City Attorney | Subject(s): Mayor Jose M. Diaz. | 09/29/14 | CLOSED Date: <u>10/30/14</u> |

Allegation(s):

City Attorney for Sweetwater, Ralph Ventura (Ventura), contacted the COE and informed that Mayor Jose M. Diaz (Diaz) hired attorney Susan Norton (Norton) of Allen, Norton & Blue, P.A. (ANB) to represent him in connection with appeals filed by City employees terminated by him on May 19, 2014. Ventura advised that Diaz submitted several check requests to the City in amounts under \$1,000, along with corresponding invoices for services rendered by ANB. Ventura advised that Diaz has the authority to make purchases for the City in amounts not to exceed \$1,000 per single transaction without the need of putting the purchase out to bid, or getting prior commission approval.

Relevant Law:

Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1(g) *Prohibition on exploitation of official position*. "No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others..."

City of Sweetwater Municipal Code, Sec. 2-227 – *Mayor's authority; necessity for bids or request for proposal*. "The mayor shall have the authority to make any purchase necessary for the city in an amount to not exceed \$1,000.00 per single purchase or transaction at his discretion, without bids, except for expenditures from the contingency fund account.

Expenditures in excess of such figure shall require prior commission approval.”

City of Sweetwater Municipal Code, Sec. 2-228 – *Bids or requests for proposals required.*

“All expenditures for supplies, material, equipment, goods or contractual services, except for professional services or those services governed by F.S. Sec. 287.055, the Consultants’ Competitive Negotiation Act that involve an expenditure by the city in excess of \$3,500.00, shall be made on the basis of competitive sealed bids or request for proposal. Expenditures for legal services rendered to the city involving special legal projects that are unrelated to the handling of the city’s day-to-day legal work shall require the approval of the city commission.”

Investigation:

Interviews/Contacts

10/01/14 – Ralph Ventura, City Attorney –

Ventura was contacted for additional information. Ventura explained that Diaz terminated a number of city employees sometime in May of 2014. Under their City Code, employees have a right to appeal to the City Commission or the union—they cannot do both. Six or seven terminated employees appealed to the City Commission. Their appeal was heard during a city commission meeting. Attorney Norton appeared at the meeting to provide Diaz representation in connection with the appeals. Ventura estimated that the appeals were heard at the June 2, 2014 City Commission meeting. Ventura stated that it is not wrong for Norton to represent Diaz, but she cannot represent the City. Ventura explained that after Norton introduced herself at the meeting, he interrupted her to make sure that she was representing the Mayor only. Ventura said that if she represented the City, she would be working for him. Ventura advised that Norton replied that she was there on behalf of the Mayor only.

Ventura explained that last week he got a call from the City Clerk asking whether the Mayor can hire his own counsel. Ventura advised that Diaz can hire his own counsel and has the authority to spend up to \$1,000 without going before the City Commission. All legal services have to be approved by the City Commission. Ventura said that Diaz did not pursue Commission approval to hire Norton.

Ventura explained that the Mayor had asked him some time ago whether he could hire counsel and he gave him a legal opinion. The invoices from Norton are for sums greater than the limits set on purchases Diaz is authorized to make, nevertheless, the check requests submitted by Diaz are for sums under the \$1,000 limit. Ventura advised that the Mayor’s former Chief of Staff, Guillermo Cuadra (Cuadra), had departed at the time in question, and the Mayor got an opinion from Ventura that he didn’t like, so he got a different opinion. Ventura said that the City has a Special Counsel Ordinance. Ventura said that Special Counsel is his authority. The Mayor was attempting to get payment of his personal legal fees by the City. The check request was initiated by Diaz’ secretary, Indira Pardillo, who signed it and he approved it. No special counsel can be retained on behalf of the City without approval from the Commission.

10/10/14 – Ralph Ventura, City Attorney –

Ventura advised that Diaz had e-mailed him on 10/06/14 stating that he would reimburse the City for all payments made to his outside counsel, ANB.

10/23/14 – Ralph Ventura, City Attorney –

Ventura provided the COE with a copy of Diaz' cancelled check in the sum of \$990 as reimbursement for the total payment made to ANB by the City. Ventura explained that the City's check no. 3072 in the sum of \$990 is the only check that was paid to ANB. The other checks were voided.

Ventura advised that he was informed by the Chief of Staff Cuadra that the Mayor is requesting a draft resolution for Commission approval of the payment of all legal fees billed by ANB involving its representation of the Mayor on labor matters.

10/23/124 – Marie O. "Val" Schmidt, City Clerk/Director of Administration –

Marie O. Schmidt (Schmidt) replied to a public records request from the COE requesting copies of any and all paid checks from the City to ANB. In her e-mailed reply Schmidt explained that check no. 3072 in the sum of \$990 was the only check paid to ANB by the City. The check was probably signed by her deputy clerk because she was not aware of the conversation that she had with the Mayor prior to his hiring Norton. Schmidt advised that she told Diaz that the only way the City would pay for Norton's services is if he would receive the approval of the City Commission. Schmidt stated that all checks to ANB presented to her were sent back unsigned. Schmidt said that when she was presented with the first check, she contacted Ventura to make sure she was doing the right thing by refusing to sign the check and he verified that she was. Schmidt stated that she is including a copy of Diaz' check reimbursing the City for check no. 3072.

Document/Audio/Video Review:

The following documents were provided by Ventura:

- 05/29/14 - Invoice #**108612** for services rendered between 05/22/14 to 05/29/14. Invoice is for the sum of \$1,211.40, less \$221.40 courtesy discount, leaving a balance of \$990.
- 05/29/14 – Check Request in the sum of \$990 payable to ANB;
- 09/22/14 – Check #3072 payable to Norton in the sum of \$990 for Invoice #108612. This is the only check paid to ANB by the City;
- 06/15/14 – Invoice #**108613** for services rendered between 05/30/14 to 05/31/14. Invoice is for the sum of \$2,833.75, less \$1,843.75 courtesy discount, leaving a balance of \$990.

- 06/15/14 – Invoice #**108613** (Amended) for services rendered between 05/30/14 to 05/31/14. Invoice is for \$2,833.75, less courtesy discount, plus balance forwarded of \$990, leaving a balance of \$1,980.
- 06/15/14 – Check Request in the sum of \$990 payable to Norton;
- 09/26/14 – Check #3081 payable to Norton in the sum of \$990 for Invoice #108613 was voided;
- 07/15/14 – Invoice #**108615** for services rendered between 06/01/14 to 06/02/14. Invoice is for the sum of \$1,000 with a \$10 courtesy discount, leaving a balance of \$990.
- 07/15/14 – Check Request payable to Norton in the sum of \$990, which is crossed out;
- 08/15/14 – Invoice #**108616** for services rendered on 06/02/14. Invoice is for the sum of \$901.80.
- 08/15/14 – Check Request payable to Norton in the sum of \$901.80;
- 10/03/14 – Check #3250 payable to Norton in the sum of \$1,891 in payment of invoices #108615 and #108616 was voided;
- 09/15/14 – Invoice #**108618** for services rendered on 06/02/14. Invoice is for the total amount of \$850.
- 09/15/14 – Check Request payable to Norton in the sum of \$850; and
- 09/30/14 – Check #3093 payable to Norton in the sum of \$850 was voided.
- Diaz' cancelled check no. 384 in the sum of \$990 as reimbursement for the total payment made to ANB by the City.
- All services rendered by ANB were in connection with labor matters related to the appeals of the terminated employees.
- **Legal opinion from Ventura to Diaz dated 10/22/13** in response to Diaz' request regarding his need and authority to hire legal counsel. In his legal opinion, Ventura advised the Mayor that he would need to retain private counsel only if he were the subject of a civil action challenging his entitlement and fitness to hold office.

Ventura cited Florida Statutes, Sec. 111.07 which states that the City is “authorized to provide an attorney to defend the Mayor in any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action or omission arising out of and in the scope of the Mayor’s employment or function, unless, in the case of a tort action, the Mayor acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” Ventura explained that this circumstance is satisfied with the counsel provided through the City’s insurance carrier.

Ventura also cited *City of Hialeah v. Bennett*, 376 So.2d 483 (Fla. 3d DCA 1979) wherein it is advised that the Mayor possesses “implied authority to employ counsel in the good faith prosecution or defense of an action undertaken in the public interest, and in conjunction with his official duties where the municipal attorney refused to act, or was incapable of, or was disqualified from, acting.”

Ventura did not cite any portion of the City of Sweetwater Municipal Code in his legal opinion to the Mayor.

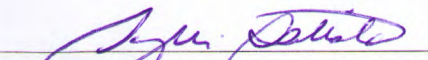
City of Sweetwater Regular Commission meeting held on 06/02/14 –

The item of the appeals of the terminations of Joanna Muniz-Rubio, Guillermo Chez, Anny Chez, Frank Alvarez, Luis Quintero and Miriam Mallea appeared under Staff Item J on the minutes of the meeting. The employees were terminated by Diaz on 05/19/14. Attorney Gary Costales appeared on behalf of the terminated employees. Norton stated her appearance on behalf of Diaz for the record. Norton stated that she is with the law firm of ANB and is there to assist the Mayor, not the City of Sweetwater. Each appeal was argued by counsel and resulted in the reversal of the terminations of Joanna Muniz-Rubio, Frank Alvarez and Miriam Mallea. The terminations of Guillermo Chez, Annie Chez and Luis Quintero were upheld.

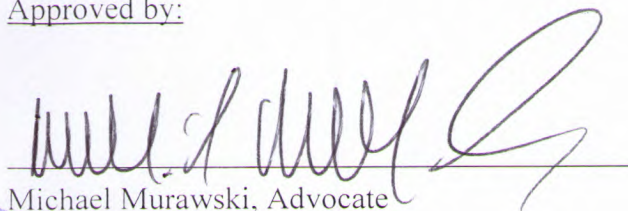
Norton's appearance on behalf of the Mayor was on the appeals of the terminations only. Norton argued in favor of the Mayor's right to terminate employees. Commissioner Bergouignan added that where there is no contract, employment is at will and employee is not entitled to due process.

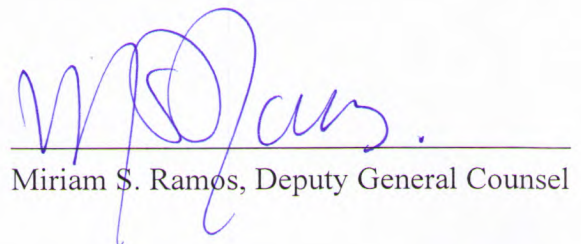
Conclusion(s):

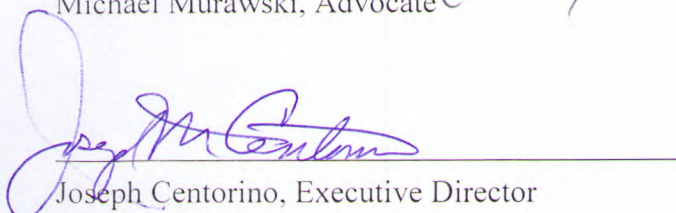
After discussion with the Ethics Commission Advocate it was determined that this matter would be closed with no further action. Mayor Diaz did not retain counsel on a purely "personal" matter but rather on a matter that was reasonably related to official city business and his role as Mayor. Although initially it was believed that the City paid all the legal fees for ANB, subsequent investigation determined that the City only paid one bill to ANB in the amount of \$990. Mayor Diaz subsequently reimbursed the City for this amount. There is no indication that Mayor Diaz profited from his act of retaining ANB nor does this appear to be an attempt to steer City business for any illicit manner or purpose.

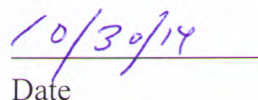

Sylvia Batista, COE Investigator

Approved by:


Michael Murawski, Advocate


Miriam S. Ramos, Deputy General Counsel


Joseph Centorino, Executive Director


Date