



Miami-Dade Commission on Ethics & Public Trust

Preliminary Inquiry Report

Investigator: Breno Penichet

Case PI16-40	Case Name: Violation of the Public Trust by failing to vote	Date Open: August 29, 2016	CASE CLOSED
Complainant(s): Jose Smith/ NMB City Attorney	Subject(s): City of North Miami Beach Councilwoman Phyllis Smith		

Date: 2/1/17

Allegation(s):

Complainant alleges City of North Miami Beach Councilwoman Phyllis Smith, was needed for quorum in order to proceed with a vote on a Resolution. After an outburst, the Councilwoman stood up and left the dais, causing the matter to be postponed until quorum could be reestablished.

Relevant Ordinances:

Possible Violation of Florida State Statute section 286.012 Florida's Government in the Sunshine.

CITIZENS' BILL OF RIGHTS:
7. No Unreasonable Postponements

Investigation:

Interviews

COE Investigator Penichet reviewed the information received along with documents provided by the Complainant, City Attorney Jose Smith (Smith), North Miami Beach. In reviewing the information, COE investigators discovered the following;

Recently at a special meeting of the City Council called for 08/25/2016, an Item came up for discussion and a final vote, concerning obtaining better health insurance package for the Police Department. During the discussion portion, Commissioner Phyllis Smith became very upset because she was not happy with her seat location on the dais. Councilwoman Smith became very angry and stormed off the dais.

When the Commissioner was asked to return, she refused causing a shortage and no quorum, thus delaying an important piece of needed legislation that was time sensitive.

According to the City Attorney, the meeting was stopped and continued only when a councilman that was home recuperating from a medical procedure was able to come and sit in, and quorum was restored.

According to the City Attorney, this type of behavior has been displayed by Councilwoman Smith several times prior, causing disruption to the proceedings and showing a lack of decorum.

Jose Smith
City Attorney
North Miami Beach, Florida.
(305) 710-6516

Mr. Jose Smith, City Attorney (CA), and Complainant, was contacted on the telephone. CA voluntarily provided information concerning this investigation. CA advised that Council woman Smith (no relation) on several occasions has acted in an unprofessional manner and has caused delays and unnecessary tension within the Council.

CA further advised that as a result, he was instructed to draft a Resolution that would prohibit this type of behavior and would allow for certain actions to be taken to reprimand the public official. CA advised that he would provide a copy of the Resolution for our review. CA felt the council woman's behavior took away from the proceedings and disrupted the Council.

The new resolution would, going forward, require the Councilperson(s) to state the reason(s) why they would not be able to attend or vote, on a particular matter, or face penalties. The

Resolution also provides authority to the Commission on Ethics & Public Trust to enforce the provisions of the Resolution, and subsections, with penalties allowed by the County Code pertaining to violations of Municipal Ethics Law". As a result Resolution 2016-9 was approved and signed by Mayor G. Vallejo as of October 4th, 2016.

Attached are documents provided by the City of North Miami Beach.

1. E-mail dated 08/27/2016 by City Attorney Jose Smith, City of North Miami Beach, with information regarding incident with Councilwoman Phyllis Smith.
2. Copy of Resolution **2016-9 "Structure of City Government"** City of North Miami Beach. Signed and approved.
3. Article "**Phyllis Smith goes postal, Tony DeFillipo saves the day**" dated 08/27/2016
4. Memorandum of Law prepared by City Attorney defending the Ordinance dated 10/4/2016.,

Conclusion(s):

All the information received was turned over to the Advocate, Michael Murawski for his review. Advocate Murawski advised that no further action would be taken on this matter and recommended that the matter be closed. The evidence is insufficient to charge Smith with violating the Citizens' Bill of Rights section (7) entitled "No Unreasonable Postponements."

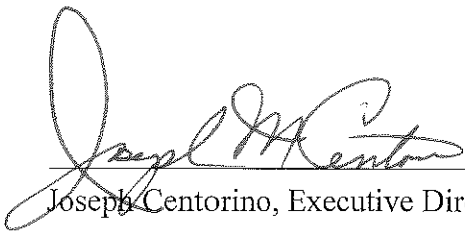
That section states, in pertinent part, that: " No matter once having been placed on a formal agenda by...any municipality shall be postponed *to another day* (emphasis added) except for good cause shown." Ms. Smith's actions, while childish and reprehensibly unprofessional, did not result in the matter being postponed *to another day*. Another Councilperson was able to attend the meeting later that same night and re-establish a quorum.


Breno Penichet, COE Investigator

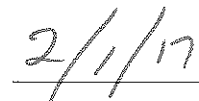
Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director



Date Closed