



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: K18-037	Case Name: Miami Beach Sick Leave and OT Allegations	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s):	Subject(s): Assistant City Manager John Mark Taxis, City Manager Jimmy Morales, et al.	April 17, 2018	

**CASE
CLOSED**

Date: 10/22/18

Allegation(s):

COE received an anonymous letter dated April 9, 2018, alleging that high-ranking City of Miami Beach administrators violated policies for the redemption of sick leave and also that they improperly received overtime pay following Hurricane Irma in August 2017.

Specifically, the letter suggests Assistant City Manager John Mark Taxis violated policy when he “was allowed to sell back 200 hours of his sick time ... at his regular pay rate (100% of salary.” The letter contends “unclassified” employees were not allowed to sell back their unused sick time in 2017. When approved, such employees can sell back up to 50 hours, according to the letter.

The letter, moreover, contends that several senior Miami Beach officials improperly received overtime pay during Hurricane Irma in alleged violation of federal labor law. The letter identifies the employees as City Manager Jimmy Morales, Finance Director John Woodruff, Allison Williams, and Payroll Supervisor Fernando Pestana.

Relevant Ordinances:

The Miami-Dade County ethics code states under Subsection (g) titled *Exploitation of official position prohibited*, 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 except as may be specifically permitted by other ordinances or resolutions ...”

Investigation:

Interviews

Raul Aguila, City Attorney

City of Miami Beach, FL

July 31, 2018

COE left a message with the secretary of City Attorney Raul Aguila to discuss whether the City intends to carry out an internal review of the allegations received by COE. Mr. Aguila had indicated during an exchange of emails that the City's Human Resources office might conduct such a review, but no definitive answer was subsequently provided. His secretary, Miriam, advised that Mr. Aguila is on vacation until the following week. On Aug. 21, Mr. Aguila advised that COE should contact the HR department directly.

Michael Smith, Human Resources Director

City of Miami Beach, FL

Aug. 22, 2018

Mr. Smith said he had seen the allegations referenced in the April 9 anonymous letter. He said his office did not conduct an internal review at the time because in his view there were no violations of City rules. "There was nothing to it," he said.

With respect to the sick time that Assistant City Manager Taxis allegedly sold back to the City in violation of City rules, Mr. Smith stated that the transaction was authorized by resolution. He said he would provide a copy of the resolution and any supporting items.

Concerning the payment of overtime to City Manager Morales and other senior officials, Mr. Smith stated that: "We have a hurricane emergency policy that does allow exempt employees, under extraordinary circumstances, to receive overtime during hurricanes," he said. Smith added that the policy was reviewed by Chief Deputy City Attorney Aleksander Boksner, as well as an outside labor lawyer, Jim Crosland, and that there was no violation of the Fair Labor Standards Act (FLSA) because employees were compensated for the overtime.

Mr. Smith agreed to provide supporting documents for both matters.

On Aug. 27, COE contacted the Miami Beach HR Department and confirmed that Mr. Smith had received the email requesting applicable records on Aug. 23. Smith advised through an assistant that he was awaiting information and would provide it upon receipt.

On Sept. 4, 2018, COE received an email from HR Director Smith elaborating on his above-noted remarks, along with the requested documents. The email was added to the file.

In the email, Smith stated the following:

- Three of the named parties in the anonymous letter received additional pay in accordance with the City's emergency compensation policy. (See Oct. 13, 2016, memo

from HR Director Smith to Manager Jimmy Morales, provided as attachment.) He identified them as Financial Analyst Fernando Pestana; Assistant Finance Director Allison Williams (9 hours); and CFO John Woodruff (48 hours). He said all worked at the City's Emergency Operations Center. Other exempt employees in the Police, Fire, and Public Works departments were paid "straight time" for their hours worked, but were not named in the anonymous letter, Smith further advised.

- Mr. Smith further stated in his email that, contrary to the anonymous letter, City Manager Morales received no extra pay as a result of Hurricane Irma.
- Pertaining to the payment of 200 hours or unused sick leave to ACM Taxis, Mr. Smith stated in the email that, upon consultation with his department and with City Attorney Aguila, it was determined that it was within the discretion of City Manager Morales to approve Taxis' request to sell back accumulated vacation time to the City.

Document/Audio/Video Review:

In response to a request for information made to the City's HR director, the following records were obtained and reviewed by this investigator, as follows:

Memorandum dated Oct. 13, 2016, from HR Director Michael W. Smith to City Manager Jimmy L. Morales regarding: Compensation of City Employees During Emergency

- The memo states in Section III, Subsection A (1), that: "Employees who are needed will be expected to work. They will be compensated according to the City's normal pay practice."
- The memo further states, in Subsection (C)(2), that: "Exempt unclassified employees who are assigned to positions which are required to work to provide services will be paid administrative leave for normal work time plus their regular hourly rate for actual time worked."

Payroll records, for the period from Sept. 4, 2017, through Sept. 17, 2017

These showed that Ms. Williams received paid administrative leave for working on Sept. 12, 2017, for (9) hours at her regular pay rate of \$87.47 per hour; that Mr. Pestana received paid administrative leave for working six (6) hours on Sept. 12, 2017, at his regular pay rate of \$40.96 per hour; and that Mr. Woodruff received paid administrative leave on Sept. 9 through 12 for working forty-eight (48) hours at his regular pay rate of \$101.57 per hour.

Records provided for City Manager Morales reflected that Mr. Morales was not paid any administrative leave during the period coinciding with Hurricane Irma.

The memo and payroll records were added to the file.

Memorandum dated Jan. 23, 2017, from ACM Taxis to Manager Morales

In addition, Mr. Smith provided a copy of a memo from ACM Taxis dated Jan. 23, 2017, requesting the "sellback" of 200 hours of unused sick time and annual leave. The memo, addressed to City Manager Morales, was subsequently approved by Morales. Also attached to the memo were related payroll activity reports, emails regarding the City Attorney's position that it was within the rights of the City Manager to approve the request, as well as a copy of the Unclassified Employees' Leave Ordinance (No. 1613). Copies were added to file.

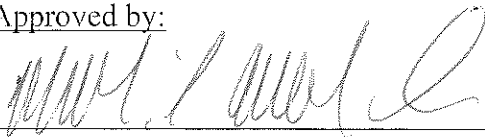
Conclusion(s):

After consultation with the Ethics Advocate it was determined that this matter would be closed with no further action as the payments appear to be authorized and no ethics violations were identified.

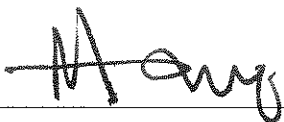


Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate



Jose Arrojo, Executive Director