

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



COPY

GENERAL LETTER OF INSTRUCTION

To: City of Miami Beach
Elected officials and employees

From: Miami-Dade County Commission on Ethics and Public Trust

Re: Ethics Complaint C11-014

Date: June 2011

On April 8, 2011, an Ethics Complaint was filed against a City of Miami Beach official for violating Section 2-11.1(e)¹ of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance (the Code) entitled *Gifts*, for failing to disclose the cost of airfare received by his spouse from the City, in order for her to accompany him on several trips to Switzerland.

On May 26, 2011, the Ethics Commission held a hearing on this matter for the purpose of making a probable cause determination. During the hearing, City Attorney Jose Smith stated that it has long been the City's policy for spouses to attend this particular trip to Basel, Switzerland. He explained that the protocol expected at numerous events makes the spouses' presence necessary to conduct the City's business and the spouses further the City's goals while there in various capacities, including staffing information booths. He also explained that there was confusion surrounding the issue, given the role played by spouses on these trips, of whether the City's payment of the airfare for them should be considered a gift and therefore reportable. After hearing from the City officials, at the conclusion of the hearing, the Commission chose not to rule on probable cause and voted to dismiss the complaint and issue this General Letter of Instruction.

Wherefore, the Miami-Dade County Commission on Ethics and Public Trust hereby issues this General Letter of Instruction.

¹ Sec. 2-11.1(e) (4) of the County code applies to respondent through Sec. 2-11.1 (a) and the Miami Beach Code at Sec. 2-458, Supplemental abstention and disclosure requirements.

The facts that led to the filing of the instant complaint are these:

-Information concerning City-sponsored trips to Switzerland taken by a City official and his family came to the OIA's attention.

-The official was interviewed and explained that Art Basel Switzerland, an international art show, is exhibited in June of each year in Basel, Switzerland, which is a sister city to the City of Miami Beach. Art Basel Miami Beach was first instituted approximately ten (10) years ago and has since been a major attraction for the City. Since the start of Art Basel Miami Beach, a delegation of at least two City of Miami Beach officials, their spouses, and sometimes staff members travel to Switzerland to attend Art Basel Switzerland and related events. The City pays the airfare and accommodation expenses for officials and their spouses only.

-In September 2006, City Attorney Jose Smith advised, in a memorandum, that his office was requesting an opinion from the Florida State Ethics Commission (FSEC) but that, in his opinion the City's payment of the spouse's airfare did not constitute a gift to the elected official and therefore, need not be reported.

-In December 2006, the City received the requested opinion from the FSEC. The FSEC opined that spouse/companion's airfare must be reported as a gift by the City official or employee in question. Mr. Smith subsequently distributed a memorandum which explained the FSEC's opinion.

-The FSEC's opinion reasoned that the gift of the cost of airfare from the City was ostensibly a "benefit" to the elected officials insofar as they enjoyed the benefit of having their spouses accompany them on the trip.

-The official who was the subject of the ethics complaint failed to timely comply with the gift disclosure requirement as he did not file the required gift disclosures, reporting his spouse's airfare paid for by the City in June 2009 and 2010, in a timely fashion.²

RELEVANT ORDINANCES

Section 2-11.1(e) (1) states, in pertinent part:

"The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration..."

² Since the complaint was filed, the official has filed gift disclosure forms for his spouse's airfares paid by the City in 2009 and 2010.

Section 2-11.1(3) (4) states, in pertinent part:

“Any person included in the term defined in Subsection (b) (1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00)...”

There is no dispute about the facts of this case. The official in question admitted that he failed to file the gift disclosure forms in a timely fashion and explained that this was due to the confusion that existed regarding whether such disclosure was required even though, as was noted, the City Attorney circulated a memorandum advising city officials that they did, in fact, have to file a gift disclosure in accordance with the FSEC opinion.

The Miami-Dade County Commission on Ethics and Public Trust has never opined on the particular issue of whether or not the payment of airfare to an official's spouse, by the Government entity of which he/she is an official, amounts to a reportable gift to the government official.

However, in an informal inquiry authored by Executive Director Robert Meyers in June 2009, the Director stated that a private airline flying a Commissioner and her spouse to the Canary Islands, and providing lodging for them while there, was considered a gift and that she should therefore “report the flight and hotel package given to her and her husband by the airline as gifts.”

Section 112.312(12), Florida Statutes, on which the FSEC opinion was based states as follows:

“(a) “Gift,” for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days...”

In its 2006 opinion to the City, the FSEC states that they, “view the spouse or guest's travel as an indirect gift to the public official and, to the extent it exceeds \$100, it must be reported....”

We decline at this time to set a hard and fast rule that all gifts to the spouse of a government official and/or employee must be reported under the Miami-Dade County Conflict of Interest and Code of Ethics ordinance. However, we instruct all government officials that they must comply with the FSEC's opinion on this matter in order to be in compliance with State law. We decline, at this time, to opine as to whether the Miami-Dade County Conflict of Interest and Code of Ethics requires disclosure under the facts of this case as presented to us. We reiterate that State law does require such a disclosure and firmly believe that disclosure under such circumstances increases transparency and helps to remove even the appearance of impropriety.