

**MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST**



**GENERAL LETTER OF INSTRUCTION**

**To:** The City of Miami

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

**Re:** C12-07 (Crespo v. City of Miami officials et al.)

**Date:** April 2012

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On March 27, 2012, the Commission on Ethics (COE) dismissed Ethics Complaint C12-07, which alleged that various City of Miami officials violated Section 2-613 of the City of Miami Code and Section 2-11.1(e) of the Miami-Dade County Conflict of Interest and Code of Ethics.

In dismissing the complaint, this Commission ordered, and the City agreed to accept, a General Letter of Instruction to be issued to the City. The letter is to be used and adhered to, by the City, in developing and revising their policy concerning the use, distribution and reporting of tickets and other benefits obtained by the City through contractual agreements with certain City owned venues.

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

The COE found that there was no violation of Section 2-613 of the City Code. That ordinance specifically provides for exclusion from the general prohibition on accepting gifts from companies doing business with the City, if the items are “given for use and benefit of the City.” We found fault however, with the City’s view that, because the tickets were obtained through a contractually negotiated process, the use of the tickets was “per se” considered “for the benefit of the City,” regardless of who ultimately received and/or used the tickets or in what capacity they were used.

The City expanded on this erroneous concept to justify its position that, even after the tickets were distributed to officials or other government employees, they were not reportable gifts because they were considered to be “used for City purposes,” not because they were actually used for a City purpose, but because they were obtained through a City negotiated agreement.

This Commission recently adopted a set of suggested guidelines regarding the issue of public benefit tickets. A copy of those guidelines is attached hereto and hereby incorporated and made a part of this General Letter of Instruction. Further guidance can be found in opinions issued by the Florida State Commission on Ethics (FSEC); specifically, CEO 91-46, 92-33, 01-19 and 05-5. Those opinions express that mere passive attendance at an event for which an official has received a ticket through a “public benefits” clause does not automatically transform the event into a “public purpose.” In short, if an elected official or City employee attends an event for which he/she received a ticket through a “public benefit” contract, that does not automatically mean that their attendance at the event is “for a public purpose/business” or that he/she is using the ticket for the benefit of the City.

Under our guidelines, elected officials should not be receiving any such tickets unless they are attending an event in the performance of a public function, i.e., their receipt of tickets given for a public purpose must, by definition, fit within the parameters of “public purpose.” For further guidance on what qualifies as a “public purpose” the addendum to our guidelines is also attached hereto, incorporated herein and made a part of this General Letter of Instruction.

To be clear, we are instructing the City that merely because an individual official or employee receives a ticket obtained ostensibly for the “use and benefit of the City,” does not automatically or per se make the use of that ticket by the individual “for a public purpose” or “for City business,” thereby, exempting the ticket recipient from gift reporting compliance. *In other words, accepting tickets obtained through contractual negotiated arrangement by the City will not violate 2-613, but may still require gift reporting pursuant to 2-11.1 (e)(4) and, where applicable, State of Florida reporting requirements. Disclosure is only not required when the ticket(s) is utilized for a legitimate public purpose, for example, when the official is present in their official capacity, on behalf of the City.*<sup>1</sup> However, we strongly caution officials and employees that “public benefits” i.e. those tickets or other benefits obtained by the government through the exercise of its contractual power and authority should not be used for the private enjoyment of officials and employees. This is especially so where the official is involved in making the decision to distribute the public benefits.

Moreover, we instruct the City that, where the government official or employee is given two (2) or more tickets (one for themselves and one for their spouse, for example) the receipt of both tickets should be disclosed as a gift by the government official. This logic is not only consistent with FSEC opinion 92-33, but also with this Commission’s holding in ethics

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<sup>1</sup> CEO 01-19 spells out other usage criteria to include: attendance to promote economic development, recognize the contribution of city boards, neighborhood associations, youth groups and other community service organizations.

complaint C11-14. C11-14 involved a municipal City Manager who failed to disclose as a “gift” the cost of his spouse’s travel expenses which were paid for by the municipality. In making its determination, this Commission relied on FSEC opinion 06-27, which specifically held that a city official has received a gift when the city pays travel expenses for the official’s spouse to accompany the city official on a city-sponsored trip. It seems a natural extension that an invitation (or ticket) given to one spouse (who happens to be required to report gifts) that includes the offer to bring the other (non-reporting) spouse, is a gift to the reporting spouse, not a separate, non-reportable gift to the non-reporting spouse.<sup>2</sup>

We remind the City that it is often the mere appearance of impropriety that shakes the public’s trust and confidence in its officials; thus, every care should be taken to avoid such appearances.

This Commission is aware and appreciative of the fact that the City has already begun to draft policies that bring its practices in line with the recommendations and guidelines that we have promulgated. The City is encouraged to seek an ethics opinion from this Commission in any future circumstance or whenever there is a question or doubt about the ethical implications of any matter.

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<sup>2</sup> In INQ 09-86, the former Executive Director of the COE advised Commissioner Rebecca Sosa that she must disclose as gifts all expenses associated with airfare and lodgings to the Canary Islands provided to her and her husband by an airline company in recognition of the Commissioner’s efforts in getting nonstop flights from MIA to the Canary Islands.