

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, February 14, 2018 2:43 PM
To: Sanchez, Rodzandra (COE)
Subject: Thomas Pepe, City Attorney, City of South Miami (Exploitation) INQ 18-10
Attachments: publicemployeepoliticalactivitymemo2014.docx

INQ 18-10 Pepe

From: Centorino, Joseph (COE)
Sent: Tuesday, January 16, 2018 4:41 PM
To: 'Pepe, Thomas F.' <TPepe@southmiamifl.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Subject: INQ 18-10 Thomas Pepe, City Attorney, City of South Miami (Exploitation)

Mr. Pepe,

You have inquired concerning the limitations on public discussion at City Commission meetings in the City of South Miami, particularly in regard to the use of the public forum at a Commission meeting set aside for public comments.

In general, the jurisdiction of the Ethics Commission in this area comes under Section 2-11.1(g) of the County Ethics Code, Exploitation of Official Position. This would prohibit the use of one's public position or authority to provide any special privileges or exemptions to oneself or to others not specifically permitted by ordinance or resolution of the City Commission. This has been interpreted to limit public officials and employees from engaging in political activity on public time or using public resources for such purposes. Political activity conducted at public expense is not seen as different from other private purposes, such as private business activities, which should be conducted separately from official government business. I have attached a memo that has been circulated in the past to County and municipal public officials and employees. Section 104.30, Florida Statutes, which does not fall within the jurisdiction of the Ethics Commission, also addresses the use of official authority to influence another person's vote or affecting the results of an election.

The City of South Miami is required under Section 286.0114 to provide the public with a reasonable opportunity to be heard on a "proposition before a board or commission." This would require the City to provide public access at its Commission meetings for members of the public to comment on issues coming up before the Commission. The Ethics Commission does not have the authority to interpret or enforce this provision. However, it does not appear to me to require or authorize any political statements, i.e., statements made in support of particular candidates for public office, where such candidacies are not subject to any vote or decision of the Commission. I think that the Commission has the latitude to allow people to speak at its meetings for various community or public-interest purposes. However, I would be concerned that the use of an official Commission meeting for political purposes could be in violation of Section 2-11.1(g) of the Code or Section 104.30, particularly where it could result in certain political candidates obtaining benefits to their campaigns through the use of a government forum, which not all candidates would equally receive.

There is no prohibition against the use of public facilities for public forums or political debates, where properly sanctioned for such purposes, and held to provide the public with information concerning candidates for public office that would enhance the public's understanding of their qualifications and positions on issues. However, the use of the public participation provision at official City meetings conducted by City officials regarding business of the City of South Miami to provide a forum for partisan political speech could be construed to violate Section 2-11.1(g) of the Ethics Code.

Sincerely,

Joe Centorino

Joseph M. Centorino

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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Friday, January 12, 2018 11:16 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: Use of Commission Meeting limited public forum to campaign

Mr. Centorino:

We are getting close to the City of South Miami elections, which is every 2 years and occurs in February of election years. I need to know who to speak to regarding what can be said during public comments concerning campaigning for candidates and issues. Is there any limitation or prohibition on allowing people to use the limited public forum of a Commission meeting during time set aside for public comments and that is broadcast to the Citizens of South Miami to advocate for or against someone or something, either based on their own opinions or on behalf of a political action committee or a candidate that they support?

Thank you.

Very truly yours,

Thomas F. Pepe

City Attorney, Board Certified by the Fla. Bar
in City, County and Local Government Law.

City of South Miami

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