

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, May 10, 2018 8:49 AM
To: Sanchez, Rodzandra (COE)
Subject: Thomas Pepe, City Attorney, City of South Miami (Exploitation, Right to be heard) INQ 18-114
Attachments: C 13-41 Public Report and Final Order and Stipulation to PC and Settlement Agreement.pdf

INQ 18-114 Pepe

From: Centorino, Joseph (COE)
Sent: Wednesday, May 09, 2018 4:54 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>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: INQ 18-114 Thomas Pepe, City Attorney, City of South Miami (Exploitation, Right to be heard)

Mr. Pepe,

You inquired regarding whether there would be any ethical or legal impropriety involved in allowing Kristin Rosen Gonzalez, a political candidate for Congressional Seat 27, to participate in a public meeting of the South Miami City Commission for the purpose of introducing herself as a political candidate. You do not specify about the exact manner in which that might occur, but I will assume, for the purpose of this inquiry, that it would likely occur during the time reserved for public comment at the beginning of the council meeting. As you are aware from our prior opinion to you, INQ 18-10, it is not appropriate and a possible Exploitation of Official Position under Section 2-11.1(g) of the County Ethics Code, for City officials to use or permit the use of a public meeting, or any public facilities, for the purpose of a political campaign speech or overt political advocacy. It is a misuse of the public resources that are involved in running a public meeting in a government facility for such resources to be used for partisan or political campaign activity. The finding of this agency in C13-41 (attached), a case involving a former South Miami official, is also relevant in this regard.

Neither Section 286.0114, Florida Statutes nor Section (A)(5) of the Miami-Dade County Citizens' Bill or Rights require that such overt political advocacy be allowed during the public comment section of a public meeting.

Section 286.0114(2) requires that members of the public be given a reasonable opportunity to be heard **"on a proposition before a board or commission."** I would interpret that provision to apply to any matter that is on an agenda or is to be brought up for consideration at such a meeting. A political campaign or election to be decided by the voters is not a "proposition before a board or commission."

Section (A)(5) of the Citizens' Bill or Rights is somewhat broader than the latter statute, in creating, within reasonable limits, a right for any interested person to appear before "any County or municipal agency, board or department for the presentation adjustment or determination of an issue, request or controversy **within the jurisdiction of the governmental entity involved...**" I interpret the latter provision to include, not only matters that may be on an agenda or which are brought up for consideration by the board at a meeting, but also to issues that have been or could be decided by the board or agency in question. A political campaign to be decided by the voters is not such an issue.

If a matter falls outside of the parameters of these two provisions, then the right of any person to appear and be heard that underlies each of them would not apply to that matter.

The fact that there is no explicit right to speak and be heard at a meeting, however, does not mean that it would be an illegal act to permit an individual to address the board about an issue pertaining to the community or other public interest which is not to be taken up at the meeting. Any public board or agency has broad discretion, within reasonable limits, to permit anyone to address an issue of public concern or importance at a public meeting. I would draw the line, however, at political advocacy that has an overt partisan or political purpose to influence an election to be decided by the voters. Such "electioneering" speech is properly made at a political forum advertised and designed to provide voters with information about political candidates. Allowing unrestricted campaign-related speeches at a government meeting would seriously interfere with public business and could also result in an Exploitation violation where public officials are intentionally promoting or permitting the use of public resources for such overt political campaign activity.

Permitting one candidate in a given political race to be introduced **as a candidate** at a public meeting can be construed as having only a political purpose. It could easily lead to further political commentary by that individual or others involved in the meeting. It could also lead to a claim by other candidates to be permitted the same access afforded to that candidate. As indicated above, government meetings are for government business, not political campaigning.

It should be noted that mere criticism of an elected official or of a governmental administration for decisions or policies, even during an election campaign by a candidate or by an individual known to have an interest in the outcome of the campaign, does not fall within the ambit of political campaigning. The prohibition against political campaigning during official meetings of a government body should not be used to suppress comments by members of the public regarding issues of public concern and interest.

Sincerely,

Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Tuesday, May 08, 2018 9:15 AM

To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: Candidate wishing to introduce herself at Commission meeting

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Kristen Rosen Gonzalez, a candidate for congressional seat 27, has asked if she could come by the Commission meeting and introduce herself. Since she will inevitably advise the Commission that she is running for Congressional seat 27, I am concerned that this will appear to be using public resources to promote a political candidate if anyone on the City Commission authorizes her to appear at the meeting or if she promotes herself as a candidate while at the podium.

Is it permissible for a commissioner to confirm that she may appear and introduce herself?

If so, should she limit her speech to merely advising the commission that she is a candidate? If so, and if she exceeds that limitation, should she be prevented from continuing?

Very truly yours,

Thomas F. Pepe

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