

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Thursday, August 30, 2018 11:53 AM  
**To:** Sanchez, Rodzandra (COE)  
**Cc:** Turay, Radia (COE)  
**Subject:** INQ 18-179, Thomas Pepe, City Attorney, City of South Miami (Gifts, Exploitation of Official Position)

INQ 18-179 Pepe

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Monday, July 23, 2018 5:12 PM  
**To:** 'Pepe, Thomas F.'  
**Cc:** Centorino, Joseph (COE); Murawski, Michael P. (COE); Perez, Martha D. (COE); Turay, Radia (COE)  
**Subject:** INQ 18-179, Thomas Pepe, City Attorney, City of South Miami (Gifts, Exploitation of Official Position)

Mr. Pepe:

You have inquired whether the County and City of South Miami ethics codes would prohibit a City Commissioner from using his or her official title and/or using city resources to promote an individual private, for-profit company.

I discussed this matter over the phone with you and I understand that your question is based on the following background. You asked whether a City Commissioner may use his official title, or use City resources (including but not limited to, use of the commissioner's City stationery; the City's email, City website; or speaking from the dais during a public meeting), to promote a private business. I assume for purposes of this inquiry that neither the Commissioner nor any City personnel would have any financial interest in, or receive any personal, private benefit from the endorsement of the private business.

It is noted that nothing in the County or City of South Miami ethics codes prohibit Commissioners from taking action as a governing body to promote **all** local businesses, or encouraging local citizens to patronize local businesses. City resources may be used following such action by the governing body designating as official City business, the solicitation of support for local businesses. *See* INQ 09-134 (City resources must only be used to further official City business. City employees may not use City resources such as the City website or City workers to encourage citizens to shop locally unless the governing body has authorized such action as official city business).

In addition, the County and City ethics codes permit Commissioners to solicit gifts on behalf of a non-profit entity for use solely by the non-profit where neither the Commissioner, nor his or her staff, receives any compensation because of the solicitation. City of South Miami Code §8A-1 (e)(2), and County Ethics Code §2-11.1(e)(3). However, the COE has previously clarified, that government resources must only be used to further official City business and that the exemption for solicitation on behalf of non-profit entities does not apply to Commissioners using their official position to take actions to solicit on behalf of a private company. *See* INQ 09-134 (cited above) and INQ 03-130 (City Commissioner's appearance in a television advertisement on behalf of a non-profit is a solicitation but is permitted because the ethics code permits solicitation on behalf **non-profit** organizations. However, the Commissioner is prohibited, in his official capacity, to solicit on behalf of a private for-profit company).

Furthermore, use of city resources to promote an individual private business may also constitute exploitation of official position. City of South Miami Code §8A-1 (g), and County Ethics Code §2-11.1(g).

Thus, we conclude that a City Commissioner may not use City resources to engage in solicitations to promote individual private businesses.

This opinion is based on the facts presented. Please contact us for further guidance if these facts change.

Regards,

Gilma (Mimi) Diaz-Greco  
Staff Attorney



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