

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, November 15, 2018 11:47 AM
To: Campos, Evelyn (Aviation)
Cc: Arrojo, Jose (COE); Sanchez, Rodzandra (COE)
Subject: INQ 18-246, Evelyn Campos, Division Director of Professional Compliance, Miami-Dade Aviation Dept. (Free Rail Tickets for MDAD Employees, Sections 2-11.1(e) & 2-11.1(w))
Attachments: INQ 18-246 Campos.pdf

Ms. Campos:

Please note attached INQ which is re-numbered INQ 18-246 instead of 245.

Thanks and best,

Mimi

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, November 15, 2018 11:13 AM
To: Sanchez, Rodzandra (COE) <Rodzandra.Sanchez@miamidade.gov>
Subject: INQ 18-245, Evelyn Campos, Division Director of Professional Compliance, Miami-Dade Aviation Dept. (Free Rail Tickets for MDAD Employees, Sections 2-11.1(e) & 2-11.1(w))

INQ 18-245 Campos

From: Arrojo, Jose (COE)
Sent: Thursday, November 15, 2018 9:58 AM
To: Campos, Evelyn (Aviation) <ECampos@miami-airport.com>
Cc: Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-

Greco@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>

Subject: INQ 18-245, Free Rail Tickets for MDAD Employees, Sections 2-11.1(e) & 2-11.1(w)

Dear Ms. Campos:

As requested. Thank you again for seeking guidance from the Miami-Dade Commission on Ethics and Public Trust.

Best regards,

Jose J. Arrojo

Executive Director

Miami-Dade Commission on Ethics and Public Trust

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MEMORANDUM

TO: Evelyn Campos
Division Director, Professional Compliance Division
Miami-Dade Aviation Department (MDAD)

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 18-246, Brightline Gift Train Tickets to MDAD Employees

DATE: November 14, 2018

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts: You have advised that Brightline, a privately-owned rail system operator with trains serving Miami-Dade County, Florida, has offered MDAD sixty-four (64) passenger round trip tickets, at no cost, to MDAD employees for train travel from Miami to West Palm Beach or points in-between. The purpose of the offer is to promote ridership and the round-trip tickets are valued at approximately \$50. The tickets will be distributed on a first come, first serve basis and are for use on a Sunday, outside of the County's standard business work week schedule.

You have further advised that Brightline is not an MDAD or County vendor and that the rail operator does not do business at Miami International Airport.

The question presented is: whether MDAD may accept and distribute to its employees the free rail tickets provided by Brightline?

Discussion:

Two sections of Miami-Dade's Conflict of Interest and Code of Ethics Ordinance are relevant to the proposed gift rail ticket transaction. The Ethics Code permits county employees to accept gifts. However, Section 2-11.1(e) of the Ethics Code only prohibits staff from accepting gifts in exchange for the performance or non-performance of an official duty. There is no evidence

presented to suggest that the free rail ticket offer is made as a *quid pro quo* for County employee official act or failure to act.

The gift provisions of the Ethics Code could be further implicated by the above described factual scenario because § 2-11.1 (e)(4) of the Ethics Code requires disclosure of any gift having a value of \$100 or more. Because the value of the rail tickets is \$50 then no disclosure would be mandated.

However, these are rail tickets and thus come under Section 2-11.1(w), of the Ethics Code that prohibits county officials or employees from accepting, directly or indirectly, any travel expenses, including, but not limited to transportation, lodging, meals, registrations fees and incidentals from any County contractor, vendor, service provider, bidder or proposer. This restriction may be waived by a majority vote of the County Commission.

While it is suggested that Brightline is not a County vendor, Brightline publicly lauds its connectively to Metrorail trains. It currently provides rail service to at least one other major urban airport in Florida. Months ago, its parent company, Florida East Coast Industries, submitted a detailed unsolicited proposal to build Miami-Dade County a new civil court house next to the existing one on Miami's Flagler Street. The proposal was reviewed by the County Mayor and members of the Board of County Commissioners (BCC). It is foreseeable that Brightline or its parent company may continue to engage with the County and perhaps directly with MDAD.

The issue presented is somewhat dissimilar to one involving the acceptance by Port Miami employees of a free cruise from another Port Miami client/vendor, Disney Cruise Line. (INQ 12-229). In that instance, a port employee won a free cruise in a raffle. We opined at that time that because the cruise line was a county contractor or service provider, the prohibition would extend to port employees' acceptance of the complimentary cruise unless a waiver was granted by the County Commission. Brightline is not *currently* a County vendor or bidder.

The present situation is dissimilar to the one presented involving the inaugural cruise of the Norwegian Breakaway and Norwegian Cruise Line's invitation to Port Miami officials. (INQ 13-101) We opined in that instance that while the same §2-11.1(w), Ethics Code prohibitions would apply regarding county officials' acceptance of a free inaugural cruise, that if participation in the inaugural cruise had significance to Port Miami officials because of its partnership with the cruise line that sails out of the port, and there would be some legitimate public benefit accruing to the County because of the networking opportunities available with cruise/tourism officials, then they may accept the cruise invitation and either apply for a waiver from the County Commission, have the County pay for costs associated with the travel, or personally pay for the cruise. (*See also* INQ 15-182) However, there is no suggestion that the MDAD employee's travel on the Brightline constitutes any legitimate public benefit accruing to the County.

Finally, while it appears that the Ethics Code would technically allow for MDAD's acceptance and distribution of the free rail tickets to County employees, The Commission on Ethics has found that the acceptance of gratuities by County employees creates an appearance of impropriety. (*See* RQO 07-61) In this case, because of Brightline's parent company's role as a recent proposer to the County and its public business plan, the appearance may be heightened.

In the past, the Commission has suggested that gratuities are better distributed to lesser advantaged persons or groups. For example, County Mayor Carlos Gimenez was recently gifted free tickets for youths to attend a circus event at a Miami-Dade facility and declined to accept them. He rather donated them along with an additional personal donation to the Boys and Girls Club of Miami for distribution to families served by the Club. Free rail tickets could be distributed to lesser advantaged persons that have financial limitations regarding work or school related travel.

Opinion: Brightline is not currently a client, vendor or proposer to the County or MDAD. MDAD could accept the free rail tickets and distribute them to employees who would not have to disclose them as gifts because of their value. However, because of the recent proposer status of Brightline's parent company and prior Commission on Ethics' opinions regarding the appearance of impropriety created by County employees accepting gratuities, it is suggested that the tickets should not be given to MDAD employees and should be distributed to a lesser advantaged group of persons. Alternatively, MDAD should decline to accept the free rail travel tickets.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.