

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, February 07, 2018 10:12 AM
To: Sanchez, Rodzandra (COE)
Subject: Thomas Pepe, City Attorney, City of South Miami (Exploitation, Section 2-11.1(g), Sections 104.31, 106.113, Florida Statutes) INQ 18-34

INQ 18-34 Pepe

From: Pepe, Thomas F. [mailto:TPepe@southmiamifl.gov]
Sent: Tuesday, February 06, 2018 4:59 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: RE: INQ 18-34, Thomas Pepe, City Attorney, City of South Miami (Exploitation, Section 2-11.1(g), Sections 104.31, 106.113, Florida Statutes)

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
1450 Madruga Avenue, Ste 202,
Coral Gables, Florida 33146
Tel: (305) 667-2564
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From: Centorino, Joseph (COE) [Joseph.Centorino@miamidade.gov]
Sent: Tuesday, February 06, 2018 4:49 PM
To: Pepe, Thomas F.
Cc: Turay, Radia (COE); Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE)
Subject: INQ 18-34, Thomas Pepe, City Attorney, City of South Miami (Exploitation, Section 2-11.1(g), Sections 104.31, 106.113, Florida Statutes)

Mr. Pepe,

You have inquired concerning whether a sitting member of the City of South Miami Commission, may campaign in his or her individual capacity for or against another candidate running for a seat on the Commission or for or against an issue that will be going before the electorate for a vote.

As you are aware based on prior opinions we have issued, Section 2-11.1(g), Exploitation of Official Position, as well as Section 104.31, Florida Statutes, known as "The Little Hatch Act," would prohibit the use of one's official authority or the resources of one's public office in a political campaign or to influence an election. However, an elected official does not forfeit his or her First Amendment right to express opinions on political candidates or issues as a citizen by virtue of being elected to public office, and may freely participate in the political process as could any individual citizen.

Additionally, Section 106.113(2), Florida Statutes, would prohibit the expenditure of public funds for a political advertisement "concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors." However, Section 106.113(3) goes on to state that, "With the exception of the prohibitions specified in subsection (2), this section does not preclude an elected official of the local government from expressing an opinion on any issue at any time."

Elected officials are free to participate in political campaign activity for other candidates provided that they do not use the authority or resources of their offices to do so. They are also free to speak out on any referendum issue that is going before the voters, provided that they do not expend public funds for political advertising for such purposes.

Sincerely,

Joseph M. Centorino

Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
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From: Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]
Sent: Friday, February 02, 2018 12:40 PM
To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: Campaigning by sitting Commission member

I have been asked whether there is anything wrong with a sitting Commission member campaigning in his or her individual capacity for or against someone running for a seat on the City

Commission. It has been my opinion that a sitting Commission member, in his or her official capacity, cannot support or oppose a candidate or an issue, however, the question is: Can a Commission member, acting in his individual capacity, support or oppose a candidate or an issue that will be going before the electorate for a vote?

Thank you.

Very truly yours,

Thomas F. Pepe

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