

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, April 12, 2018 11:48 AM
To: Sanchez, Rodzandra (COE)
Subject: George Wysong, Division Chief, General Government Division, Office of the City Attorney, City of Miami (Gift Solicitation, Section 2-11.1(e)(2)(g.) INQ 18-89
Attachments: RQO 06-05 Lucas.PHT.VendorSolicitations.pdf

INQ 18-89 Wysong

From: Centorino, Joseph (COE)
Sent: Thursday, April 12, 2018 11:45 AM
To: 'Wysong, George' <GWysong@miami-police.org>
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: INQ 18-89 George Wysong, Division Chief, General Government Division, Office of the City Attorney, City of Miami (Gift Solicitation, Section 2-11.1(e)(2)(g.)

Mr. Wysong:

You inquire concerning whether the City of Miami City Manager and/or City employees may solicit contributions on behalf of a non-profit organization. The organization in question is the Do the Right Thing of Miami, Inc., a 501(c)(3) charitable organization. The solicitation will be presented to the members City of Miami Commission, Board of County Commissioners and the Miami-Dade School Board. The solicitations do not specify whether the officials are expected to donate funds personally, donate public funds, or that they are expected to themselves solicit the funds from other potential donors. I will assume, for the purposes of this inquiry, that all of the foregoing possibilities are included in the solicitation and that the organization would be receptive to any and all such donations.

You have correctly identified the issue involved, which is whether such a solicitation would be exempt from the general prohibition in Section 2-11.1(e)(3) against the solicitation of any gift by any local public official or employee, in light of the provision in Section 2-11.1(e)(2)(g), excepting from the definition of a gift "Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner, nor his or her staff receives any compensation as a result of the solicitation." That exception is limited to 501(c)(3) organizations under the Internal Revenue Code. As you point out, the exception does not appear to apply to other non-elected officials or employees, such as the City Manager or City employees. You are also correctly point out that there is no clear precedent that would include the latter individuals, although this agency has, in some instances, approved similar solicitations.

The "broadening" of the exception in Section 2-11.1(e)(2)(g) to include other non-elected public officials or employees has usually occurred in situations where the cause for which the gifts are solicited is one that may be said to closely serve the purposes of the public entity, and, therefore, be permissible under the exception in Section 2-11.1(e)(2)(e), which would permit non-elected City officials or employees to solicit on behalf of the City in the performance of their official duties for use solely by the City in conducting its official business." This interpretation could not be suitably applied to all 501(c)(3) organizations, but could apply to organizations with a substantial, official connection to the City and the City's interests in furthering established City purposes. It may well be applied to an organization such as Do the Right Thing, which I believe has a longstanding and close association with the City of Miami Police Department. I am not familiar with the exact terms of or the background of that association, but I have generally previously advised that such an association is made clear where the governing body of the public entity has explicitly endorsed and made official

the cause of the 501(c)(3) organization, as well as authorized and encouraged its officials and employees to participate in fundraising activities for that organization.

I would add that, in the event that this solicitation engenders further solicitations of private businesses or other entities, those involved in such solicitations need to be mindful of the conditions imposed against directly soliciting or targeting donors who are current City Vendors or potential City vendors seeking to do business with the City. Such entities may be included in general solicitations, but should never be directly solicited by an official or employee so as to avoid any perception that a requested donation could affect a decision by the City to contract with or otherwise engage with that business entity in the performance of other City functions. See RQO 06-05 (attached). In this connection, it would also be well to consider the broad prohibitions in Section 2-613 of the City of Miami Code as well as Section 112.3148, Florida Statutes.

I hope this is helpful to you and City in determining how to proceed in this matter. Please call me should you wish to further discuss this matter.

Sincerely,

Joe Centorino

From: Wysong, George [<mailto:GWysong@miami-police.org>]
Sent: Wednesday, April 11, 2018 5:18 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: FW: Do The Right Thing Funding Request Letters Attached for Your Approval

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Hi Mr. Centorino,

I would like to request your assistance in the following matter. I have been asked whether the City Manager and the Chief of Police may solicit a monetary contribution on behalf of a charitable organization that is a "nonprofit organization" as described in section 501(c)(3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. The request for a monetary contribution will be sent to the City of Miami Commission, the Board of County Commissioners and the Miami-Dade School Board. The charity in question is Do the Right Thing of Miami, Inc. Copies of the proposed solicitation letters are attached. The letters explain, among other things, the nature of the organization.

According to my research, the relevant section of the County Ethics Code is 2-11.1(e) and provides as follows:

(e) Gifts.

(1) Definition. The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

(2) Exceptions. The provisions of subsection **(e)(1)** shall not apply to:

- a. Political contributions specifically authorized by State law;
- b. Gifts from relatives or members of one's household;
- c. Awards for professional or civic achievement;

- d. Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature;
- e. Gifts solicited by County employees or departmental personnel on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
- f. Gifts solicited by Commissioners on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
- g. Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner, nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a "nonprofit organization" shall mean any entity described in section 501(c)(3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. As used in this subsection, "compensation" means any money, gift, favor, political contribution, thing of value or other financial benefit.

(3) *Prohibitions.* A person described in subsection (b)(1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give or agree to give to any person included in the term defined in subsection (b)(1) through (6) or for any person included in the term defined in subsection (b)(1) through (6) to accept or agree to accept from another person or entity, any gift for or because of:

- a. An official public action taken, or to be taken, or which could be taken;
- b. A legal duty performed or to be performed, or which could be performed; or
- c. A legal duty violated or to be violated, or which could be violated by any person included in the term defined in subsection (b)(1).

It appears clear that City Commissioners and their staff may solicit gifts on behalf of Do the Right Thing (DTRT) because DTRT is a nonprofit organization that is organized under IRS section 501(c)(3) and that is tax exempt under section 501(a) of the IRS code. The question is whether the City Manager or a City employee (i.e. the Chief of Police) may solicit donations on behalf of a 501(c)(3).

I have not found a clear opinion that broadens Section 2-11.1(e) to include anyone other than a Commissioner or their staff. But there are COE opinions where it appears that employees have been permitted to solicit. For example, in INQ 15-175 the COE opined that the **Deputy Mayor** is not prohibited from using his official title on United Negro College Fund (UNCF) stationery to extend invitations to a fund-raising event sponsored by UNCF, a 501(c)(3) non-profit organization, because any donations will be utilized solely by that organization, and neither the Deputy Mayor nor his staff will receive any personal benefit as a result of the donations. In INQ 15-275 the COE opined that pursuant to an exemption provided in the County Ethics Code, **city staff** from the City of El Doral may solicit donations for the American Cancer Society, a 501(c)(3) non-profit organization because the donations will be utilized solely by that organization, and City staff will not receive any compensation as a result of the solicitation. In INQ 16-93 the COE opined that pursuant to an exemption provided in Sec. 2- 11.1(e)(2)(g) of the County Ethics Code, an **Assistant County Attorney** may use his name and title to solicit donations for the Perez Art Museum's Children's Department, a 501 (c)(3) non-profit organization. The donations will be utilized solely by that organization and neither he nor any member of his office will receive any benefit as a result of the solicitation. In addition, I have reviewed INQ 04-96 and RQO 00-00111. Those opinions seem to allow employees to solicit funds on behalf of the United Way.

In summary, I am requesting whether the City Manager and/or City employees may solicit contributions on behalf of a non-profit organization.

Thank you for your consideration of this matter.

GEORGE K. WYSONG III
DIVISION CHIEF-GENERAL GOVERNMENT DIVISION



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From: Mendez, Victoria

Sent: Friday, April 06, 2018 10:13 AM

To: Wysong, George <GWysong@miami-police.org>; Min, Barnaby <bmin@miamigov.com>

Subject: Fwd: Do The Right Thing Funding Request Letters Attached for Your Approval

Are they?

Victoria Méndez, City Attorney