

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, July 08, 2019 4:18 PM
To: pstoddard@southmiamifl.gov
Cc: Arrojo, Jose (COE); 'Pepe, Thomas F.'; Perez, Martha D. (COE); Turay, Radia (COE); Sanchez, Rodzandra (COE); Anderson, Machell (COE)
Subject: INQ 19-69, Phillip Stoddard, Mayor, City of South Miami (Conflicts of Interest- Issuing proclamations and awards)
Attachments: INQ 19- Stoddard.pdf

Dear Mayor Stoddard:

Thank you for contacting the Commission on Ethics regarding possible conflicts of interests in issuing proclamations and awards to City of South Miami citizens and businesses. Attached is our response to this matter.

Please contact us if we may be of further assistance.

Cordially,

Gilma (Mimi) Diaz-Greco
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MEMORANDUM

TO: The Honorable Phillip Stoddard, Mayor of the City of South Miami

FROM: Gilma Diaz-Greco, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-69

DATE: 7-10-19

CC: All COE Legal Staff, Thomas Pepe, City Attorney, City of South Miami

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance about possible conflicts regarding issuing proclamations and/or promoting private businesses on behalf of the City of South Miami.

Facts:

You are the Mayor of the City of South Miami. Pursuant to the City of South Miami Ethics Code, the term “Commissioner” includes the Mayor and the Members of the City Commission. City of South Miami Code 8A-1(b). In your role as City Mayor, you would like to *individually* issue written proclamations and awards to recognize new businesses that open in South Miami; to recognize the anniversary dates of established or historic businesses in South Miami; and to promote the services or products offered by South Miami businesses. You would also like to individually attend ribbon cutting or other ceremonial events organized by South Miami business. We assume for purposes of this inquiry that you would not have any financial interests nor receive any private benefit from the endorsement of these private business or citizens.

Issue:

Whether the Miami-Dade County Ethics Code and/or the City of South Miami Ethics Code would prohibit you from representing or acting on behalf of the City individually as a City official, to attend ribbon cutting events organized by City businesses; to issue proclamations, civic awards, or take other actions on behalf of the City to recognize South Miami citizens, new or existing City businesses, and to promote the services or products offered by South Miami businesses.

Discussion and Opinion

The County Ethics Code does not specifically address whether a Municipal elected official may individually issue proclamations or promote individuals or businesses. However, the County Ethics Code prohibits local elected officials and employees from using their official positions to secure special benefits or exemptions for themselves or others. In applying Section (g) to the issue of elected officials individually promoting a particular City business or individual, the Commission on Ethics has determined that members of Municipal commissions may act collectively as a governing body to promote all local businesses or to encourage 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 business. *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 Commission on Ethics 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 private companies. *See* City of South Miami Code §8A-1(g), and County Ethics Code §2-11.1(g), 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 of non-profit organizations. However, the Commissioner is not permitted, in his official capacity, to solicit on behalf of private for-profit companies).

Section 8A-4.1(1) of the City of South Miami's Ethics Code is also applicable. The Commission on Ethics is empowered to review, interpret, render advisory opinions and letters of instruction, and enforce the County and Municipal Code of Ethics and Conflict of Interest Ordinances. Miami-Dade Code § 2-1072.

City of South Miami Ethics Code Section 8A-4.1(1) states that:

Every person included in the terms defined in [subsection 8A-1](b)(1) "commission members" is prohibited from acting as a representative of the commission **without the consent of the majority** other than for the purpose of presiding over ceremonial functions or civic functions as an invited guest. (Emphasis added).

We have consulted with the City Attorney and with the City Clerk who confirm that City proclamations, civic awards and recognition of citizens or business are done by consent (as defined by the City Charter and its ordinances) of the Commission as a body, and not individually by any Commission member because to do so would violate Section 8A-4.1(1).

We agree that the City's Ethics Code precludes individual Members of the Commission from issuing proclamations, awards, and recognitions *individually* without the consent of the body. Section 8A-4.1(1) provides that a Member of the Commission is prohibited from "acting as a representative of the commission without the consent of the majority..." When a City proclamation, award, or recognition is issued to a person or business, the official issuing it is *acting as a representative of the commission*. As a result, absent the consent of the commission, individual members are prohibited from issuing City proclamations, awards, and recognitions.

With respect to the issue of attending ribbon cutting or other ceremonial events as an invited guest, it should be noted that the City Code permits individual Members of the Commission to preside over ceremonial functions as an invited guest.

This opinion is based on the facts presented and is limited to an interpretation of the County Ethics Code and City of South Miami Ethics Code only and is not intended to interpret state laws. Please contact us if these facts change. 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.