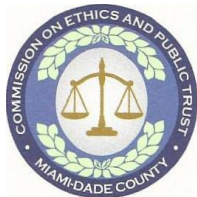


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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October 14, 2020

Via U.S. & Electronic Mail:
vvicente@ngnlaw.com

Valerie Vicente, Esq.
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8201 Peters Road, Suite 1000
Plantation, Florida 33324

Re: Ethics Inquiry Request, INQ 2020-105, Section 2-11.1(g), Exploitation, County Ethics Code, Outreach Efforts by a Local Elected Official

Dear Ms. Vicente:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance on behalf of Biscayne Park Vice Mayor MacDonald Kennedy, regarding the application of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance to the Vice Mayor's outreach efforts.

We respond as follows:

Facts:

A Biscayne Park Commissioner and Vice Mayor, who is also a candidate for reelection on November 3, 2020, would like to promote a Village Halloween decorating event and encourage participation. It is an inaugural event initiated by the Vice Mayor. The Village is promoting the event via an email to a database of residents and posting information on a social media platform.

The Vice Mayor would like to print an event promotional flyer using his own resources, and not that of the Village, to personally disseminate door-to-door to residents. The flyer would include a note personally encouraging residents to nominate themselves and neighbors. Finally, the flyer will include the Vice Mayor's Village business card as an attachment. The Vice Mayor's Village business cards are purchased by the Village.

The flyers would be personally distributed by the Vice Mayor throughout the Village.

Issue:

Whether the use of Village resources consisting of an elected official's municipally issued business card, accompanying a flyer promoting a Village holiday event not paid for with Village funds, when the official is a candidate for reelection, violates Section 2-11.1(g) of the County Ethics Code.

Discussion:

The Ethics Commission has interpreted Section 2-11.1 (g), Exploitation of official position prohibited, as contained in the County Ethics Code, to prohibit the use of public resources to promote elected officials standing for reelection, if there is no clear municipal purpose served by the communication, or the communication serves to significantly or exclusively highlight the elected official's personal or professional qualifications or accomplishments while in office. (See INQ 19-129)

We have sought to ensure that public resources are not used for campaign or electioneering purposes by county-wide distribution of an election season memorandum that reminds elected officials of the subsection (g) prohibition, as well as limitations imposed Florida Statute 104.31 ("Little Hatch Act"), and other state laws, local ordinances and previously-issued administrative orders:

Political campaign activities may not involve the use of public resources in support of any political campaign or candidate, including office stationery, telephones, computers, or vehicles. Taxpayers' monies must be used exclusively for public purposes.

However, applying a bright line rule that public resources must be used exclusively for public purposes can be difficult during election season when incumbents are running for re-election or election to higher office. The very nature of holding public office involves communicating with constituents and the general public and this requires the expenditure of taxpayers' monies or other government resources or funds.

In a prior ethics opinion regarding mailings by elected officials, the Commission has recognized that "there is an inherent right for an elected official to communicate with constituents regarding public issues for the purpose of soliciting their input through such a mailing, where there is no overt political message in the mailing and no pending election or political cause that motivates the mailing." (See INQ 15-08)

While the Ethics Commission has recognized that an elected official running for office will of necessity communicate with the public in his or her official duties on matters that may be relevant in a campaign, the candidate should use exercise caution in not using his public office or public duties for campaign or electioneering purposes. "Due diligence is required to make the best effort to avoid any blurring of the lines." (See generally, INQ 18-200; See also INQ 05-157: an elected

official may participate in a town hall meeting to meet his constituents and address their needs as long as the meeting does not turn into a political rally for his re-election bid).

More recently, we have opined that an elected official running for higher office, may use public resources for educational and outreach efforts if the same are related to a legitimate public purpose. As long as the publicly financed communications or messaging remains faithful to its public purpose, then referencing the official's name and title will not violate the Ethics Code's prohibition. (See INQ 20-89)

Conclusion:

Applying the reasoning underlying these various ethics opinions to the facts presented, it is clear that the Vice Mayor's use of public resources, in this case, municipally purchased business cards, as part of an outreach efforts promoting a Village Halloween decorating event and encouraging participation will not violate the Ethics Code's prohibition.

It cannot be said that messaging that encourages participation in the Village holiday event will serve exclusively to advance the Vice Mayor's accomplishments while in office or his personal or professional qualifications for reelection as a Commissioner in November 2020.

As long as the messaging remains faithful to its public purpose, then the inclusion of a Village card or the use of the Vice Mayor's name and title and his role as event initiator will not violate the Ethics Code's prohibition.

The use of municipal resources for outreach efforts during election season by the Vice Mayor that is also a candidate for reelection, as described herein, does not violate Section 2-11.1 (g) of the County Ethics Code.

Thank you again for seeking our guidance and do not hesitate to contact us for further guidance if necessary.

Sincerely,

Jose J. Arrojo /s/

Jose J. Arrojo
Executive Director

cc: All Commission on Ethics Attorneys

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.