



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Honorable Daniella Levine Cava  
County Commissioner for District 8

**FROM:** Jose J. Arrojo  
Executive Director

**SUBJECT:** INQ 2020-121, Section 2-11.1 (e), Gifts, Solicitation or Acceptance of  
Donations for Swearing-In Events

**DATE:** November 6, 2020

**CC:** COE Legal Staff

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Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to your position as a County Commissioner and donations solicited or accepted by you or members of your staff for use at Mayoral swearing-in events.

Facts:

You are currently the Miami-Dade County Commissioner for District 8 and the Mayor-elect. In accord with the Article II, Section 5(b) of the Florida Constitution and section 876.05, Florida Statutes, as interpreted by courts, before you assume the office of Mayor, you are required to execute a oath of office as an officer of a subdivision of the State of Florida.

Consistent with these requirements of law, you will be participating in events relating to your swearing-in as the Mayor. ("swearing-in events") One event will occur on November 17, 2020, the date of the commencement of your term as Mayor.

As part of your swearing-in events, you may decide to discuss your work and accomplishments as a County Commissioner and also detail your new policy goals and plans for the County as its newly elected Mayor.

You or your staff may solicit food and beverage donations that will be offered to members of the public, elected officials, and staff attending the events. There may be additional

solicitations for ancillary items or services for the swearing-in events. You may also accept unsolicited donations for these events.

Issue:

Whether a Miami-Dade County Commissioner or members of her staff may solicit donations for Mayoral swearing-in events, or accept unsolicited donations, pursuant to the exception to the County gifts ordinance found at Section 2-11.1(e)(2) f. of the County Ethics Code.

Discussion and Opinion:

As a preliminary matter, a County Commissioner and Mayor are covered persons under Section 2-11.1(b)(1) of the County Ethics Code. Members of your staff are likewise covered persons under Section 2-11.1(b)(6). The items or services that may be solicited or accepted as unsolicited donations for the swearing-in events constitute a gifts, as they have an economic value and consist of entertainment, hospitality, food or beverage, as defined in gifts section of the of the County Ethics Code at Section 2-11.1 (e)(1) of the Code.

The prohibitions section of the gifts ordinance found at Section 2-11.1.(e)(3) of the County Ethics Code provides that Commissioners and their staff “shall neither solicit nor demand any gift.”

However, the exceptions portion of the gifts ordinance in Section 2-11.1(e)(2) f. of the County Ethics Code allows a Commissioner or her staff to solicit gifts (donations) on behalf of the County provided such solicitation is in the performance of their official duties for use solely by the County in conducting its official business. The Ethics Commission has interpreted this provision to permit the solicitation of donations which serve a public purpose.

In prior ethics opinions, the Ethics Commission has found that solicitations of donations for public events celebrating patriotic or civic holidays, serve a public purpose. *See* INQ 11-84 (solicitations of donations for Independence Day events are permissible because celebration of a patriotic event constitutes a public purpose); and INQ 12-130 (solicitations for a celebratory event in honor of a municipal centennial serve a public purpose).

Likewise, solicitations of donations in support of business or professional association events that promote business expansion in the community or otherwise highlight the community also serve a public purpose. *See* INQ 15-55 (solicitation of funds in support of “tech week” events by a city are permissible and constitute a public purpose and attendance by officials constitute performance of official duties in connection with the city’s official business); INQ 14-278 (solicitation of sponsorships in support of a port authorities association event serves a clear public purpose); and INQ 16-02 (solicitations for a city’s sponsorship of a mayor’s conference is permissible since the solicitation is for a city function and of significant public benefit to the city).

Finally, the solicitation by an elected official of tickets to events may be permissible if the official is presenting a proclamation to an event sponsor or receiving official recognition on behalf of the County from the sponsor or third party. The attendance at these events could affirmatively promote the County and thus could constitute “official duties” performed by the official such that entrance tickets and attendance might constitute an exception to the prohibitions section of the gift ordinance. *See generally* INQ 20-04 (solicitation and acceptance of gifted tickets to the mayor to a major football event).

Applying the reasoning of these prior ethics opinions to the facts presented, it is clear that your participation in events where you will take the Mayoral oath of office as required by law at the commencement of your term and where you may discuss your past work as a Commissioner and detail your plans and goals for your term as a Mayor, constitutes performance of your official duty. These events constitute official County business.

It is understood that swearing-in events for newly elected officials and those related to the commencement of a term where new officials outline their plans and goals for new office are celebratory. As long as there is a swearing-in as required by law and the discussion of plans and goals related to governance, then these events will constitute public purpose events and solicitations of donations will be exceptions to the prohibitions section of the gifts ordinance.

These events are distinguishable from purely or primarily celebratory post-election “parties” even if they include a limited presentation by the elected official regarding goals of new office. These purely or primarily celebratory post-election parties would not constitute the performance of official duties or official business. Solicitation of donations for post-election parties are not exceptions to the prohibitions section of the gift ordinance.

In abundance of caution and to avoid any appearance of impropriety, if there is any doubt that a swearing-in event may be construed as a purely or primarily celebratory post-election event, then neither you or your staff should solicit any donations.

The unsolicited acceptance of donations or gifts is not prohibited under the gifts ordinance as long as the acceptance is not part of a *quid pro quo* transaction involving acceptance of the gift and the performance or non-performance of a public or legal duty or action.

If you decide to accept unsolicited donations for post-election celebratory parties then you are required to disclose those gifts pursuant to the disclosure section of the gifts ordinance found at Section 2-11.1(e)(4) of the Ethics Code.

As relates to unsolicited gifts, the County Ethics Commission does not have the authority to interpret or enforce the Florida Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes (State Ethics Code). Nevertheless, a comment on section 112.3148, Florida Statutes, is merited.

That section prohibits you or any other person acting on your behalf from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the County, a political committee, or a lobbyist who lobbies the County, or directly or indirectly on behalf

of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100.

County lobbyists and their principals are registered in a publicly accessible, on-line database maintained by the Clerk of Board.

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.