



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Honorable Kionne McGhee
County Commissioner for District 9

FROM: Jose J. Arrojo
Executive Director

SUBJECT: INQ 2020-134, Section 2-11.1(e), Gift Solicitations

DATE: December 8, 2020

CC: COE Legal Staff

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 gift solicitations.

Facts:

You serve on the Board of County Commissioners for District 9. In an effort to promote the upkeep and beautification of residential properties in your district and otherwise promote civic participation, you are considering sponsoring a holiday decoration contest.

As part of this initiative, you may use your County district staff and resources to inform the public of the contest and to otherwise encourage participation. Also, you plan to solicit donations from individuals or private businesses in your district. The donations will be used fund awards for the winning residents in the form of gift cards.

The winners will be chosen by a panel of persons from the community and neither you nor members of your district staff will be involved in selection.

Issue:

Whether a County Commissioner may solicit donations from individuals and private businesses for gift cards to be awarded in holiday decoration contest where winners will be chosen by a panel

of persons from the community and neither the Commissioner or his staff will be involved in the selection.

Discussion and Opinion:

The County Ethics Code at Section 2-11.1 (e)(3) generally prohibits the solicitation or demand of a gifts by local employees and elected officials.

Section 2-11.1 (e)(3) Prohibitions. A person described in subsection (b)(1) [mayors and commissioners] through (6) shall neither solicit nor demand any gift.

The applicable exceptions to the general gift solicitation ban are contained in subsections 2-11.1 (e)(2)(f) and (2)(g) which allow the solicitation of gifts by commissioners in the performance of their official duties for use solely by their government entity in conducting official business.¹

Accordingly, the Ethics Commission has recognized that private donations and funds can be properly relied upon to support essential government functions and to promote government-sponsored community programs and charitable causes and events which clearly serve a public purpose, including feeding or aiding those in need. However, the Ethics Commission recommends that local governments should adopt safeguards to avoid appearances of impropriety and to ensure that solicitation, acceptance, and use of private funds are governed with the highest standard of ethics, transparency, disclosure and accountability in these solicitation and funding processes. *See generally RQO 02-70; INQ 13-70; INQ 19-124.*

Prior Ethics Commission opinions regarding solicitation of charitable contributions are instructive on this point. Solicitations of donations from private businesses should be broad based. The Ethics Commission has cautioned against direct solicitation of current or future County vendors and contractors, while recognizing that these parties can be part of a larger solicitation that includes members of the general community. RQO 06-05.

Also, the Commission has approved of solicitations for a specific purpose. For example, a city may receive sponsorship donations that will go to municipally hosted events (like a July 4th Celebration) but must avoid any implication of a quid pro quo regarding solicited vendors that agree to participate. INQ 16-160. For other specific holiday functions or to aid residents in need, the Commission has concluded that accepting and immediately distributing the donated items to recipients is permissible under the Code. Specifically, it has approved of immediate distribution of turkeys or food items donated by county bidders that go to less advantaged families after donation. INQ 15-255.

¹ Because businesses or persons that are solicited may feel compelled to donate because of the official's position, the soliciting official should be careful to avoid any appearance that he or she is: using or attempting to use his or her official position to secure special benefits for others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted by the Board of County Commissioners. *See Section 2-11.1(g) of the County Ethics Code.*

As long your solicitations are broadly based, and you and your staff use a panel comprised of persons from the community and an otherwise transparent process for selection and distribution of donated gift cards, then your proposed solicitation of charitable donations from private businesses for a holiday decoration contest does not violate the County Ethics Code.

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.