



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 . Miami, Florida 33130
Phone: (305) 579-2594 . Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Honorable Esteban Bovo, Jr.
Commissioner, District 13

FROM: Jose J. Arrojo
Executive Director

SUBJECT: INQ 20-89, Use of County Resources for 2020 Census Education and Outreach Efforts by Commissioner/Mayoral Candidate, Section 2-11.1 (g), County Ethics Code

DATE: September 3, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami Dade Commission on Ethics and Public Trust and seeking guidance regarding the application of the County Ethics Code to a continuing education and outreach initiative to encourage local participation in the 2020 Census.

Issue:

Whether the use of County resources for 2020 Census education and outreach efforts during election season by a Commissioner who is also a Mayoral candidate violates Section 2-11.1 (g) of the County Ethics Code.

Facts:

On January 23, 2019, the Board of County Commissioners (Board) passed Resolution R-72-19 establishing the Miami Dade County 2020 Task Force (Task Force). The Task Force was charged with creating an action plan to encourage local participation in the 2020 Census. The action plan was presented to the Board in November 2019. One of the plan recommendations was to spend County funds on education and outreach efforts relating to the Census. Funding for the education and outreach initiative was approved by the Board at the Mayor's recommendation through FY 20-21 from the Future Services Reserve Fund.

You served as the Chairman of the Task Force and were also designated by the Chairwoman as the Board's Liaison to the 2020 Census and charged with collaborating with community

partners. As such, it is expected that your name, title, and image may appear in some or all of the outreach and education materials.

You are a Mayoral candidate in a run-off election that will take place in November 2020.

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 produce and make publicly available, videos depicting elected officials standing for reelection, if there is no clear municipal purpose served by the video, or the video 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 by 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 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).

Finally, elected officials who are candidates should be careful not avail themselves of public forums that are available to them, but otherwise may not be available to nonincumbent candidates. The Ethics Commission has cautioned regarding the use of a Council meeting's allotted public comment agenda during elections season for purely partisan political speech in support or opposition of a candidate. The use of the public comment agenda during elections season by one candidate to introduce or advocate her candidacy "could also lead to a claim by other candidates" that they are being denied the same access to the forum. *See generally* INQ 18-10; INQ 18-114.

Applying the reasoning underlying these various ethics opinions to the facts presented, it is clear that the use of public resources for education and outreach efforts related to the 2020 Census is an appropriate expenditure related to a legitimate public purpose. The Board's resolution creating a Task Force and asking for an action plan to encourage local participation in the 2020 Census clearly establishes the governing body's policy in this regard.

As such, it cannot be said that messaging that educates and encourages local participation in the 2020 Census will serve exclusively to advance Commissioner Bovo's accomplishments while in office or his personal or professional qualifications for the Mayor's position.

We caution, the 2020 Census messaging should not stray from its very legitimate public purpose. As long as the messaging remains faithful to its public purpose, then referencing Commissioner Bovo's name and title and his role as Board's liaison to the community for the initiative, or the use of his image in the messaging, will not violate the Ethics Code's prohibition.

Conclusion:

The use of County resources for 2020 Census education and outreach efforts during election season by a Commissioner who is also a Mayoral candidate 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.

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.