


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Jose “Pepe” Diaz
Chairperson
Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2022-62, County Ethics Code, Section 2-11.1(e), Gift Solicitations
and Section 2-11.1(w), Third-Party Funded Travel

DATE: April 6, 2022

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 charitable gift solicitations and third-party funded travel.

Facts:

As a result of the Russian military invasion of Ukraine, it is reported that over one million civilians have fled Ukraine to safe havens in neighboring countries, including Poland, Hungary, Slovakia, Romania, and Moldova.

Internationally, governments, non-government organizations (NGOs), and individuals are helping families impacted by Russia's invasion by donating food, clothing, medicine, and other essential life supporting relief. ¹

¹ The term “NGO” is generally used to describe a nonprofit organization that operates independently of any government and is typically one whose purpose is to address a social or political issues that have impacted safety, public health, the availability of food, medical treatment, housing, or other essential human needs.

The Chairperson of the Board of County Commissioners is planning to lead a County effort to solicit charitable contributions for Ukrainian citizens and others impacted by war. As part of this effort, donated items will be collected, stored, transported, and distributed to Ukrainian immigrants that have fled warzones. The focus of the distribution effort will be in Poland.

The Chairperson plans to travel to Poland in his official capacity and will be present when the donations are distributed. While there, the Chairperson intends to familiarize himself with the situation on-the-ground and apply that knowledge to possible future County sponsored efforts to support the uprooted Ukrainian population.

The Chairperson may solicit a variety of entities to assist in the effort described above. Some of the donor entities may be County contractors, vendors, or service providers. Others may be bidders or proposers seeking County contracts.

Donated items may be stored locally in County facilities, including aviation storage sites, before loading onto aircraft for transport to Europe. County staff may be charged with coordination, loading and transport duties.

The Chairperson's air travel, lodging, and ground transportation costs will be paid from personal funds, County funds, or by Global Empowerment Mission, Inc., a third party involved in the initiative.

Global Empowerment Mission, Inc. (GEM) is an active Florida nonprofit and a 501(3)(c) Internal Revenue Code entity. GEM has a physical presence in Doral, Florida. GEM describes itself as an international NGO dedicated to assisting persons affected by natural and man-made disasters. GEM is currently engaged in Medyka, Poland, a border crossing site between Poland and Ukraine, and is aiding fleeing refugees from the warzone in the receiving countries of Poland, Hungary, Romania, Slovakia, Moldova, and Georgia.

GEM may play a lead role in collecting, storing, transporting, and distributing donated supplies for warzone refugees in Europe. It may also provide the Chairman with ground transportation, lodging and meals while on location in Poland.

GEM is not a county contractor or vendor.

Issues:

Whether the County Commission Chairperson, or staff at his direction, may solicit charitable donations including food, clothing, medicine, storage, air, and ground transportation, to provide essential life supporting relief for immigrants fleeing the Russian military invasion of Ukraine.

Whether the County Commission Chairperson, who will be traveling to Poland on a County outbound international relief trip, may allow costs associated with the trip to be paid for by County funds.

Whether the County Commission Chairperson may accept ground transportation, meals, or lodging provided by an international nonprofit NGO providing warzone disaster relief in Poland and other countries bordering Ukraine.

Discussion and Opinion:

Section 2-11.1(g) of the County Ethics Code, *Exploitation of official position prohibited*, prohibits County officials and employees from exploiting their official position to secure special privileges, exemptions, or benefits for themselves.

The Ukrainian refugee relief trip involves travel by the Chairperson in his official capacity. The purpose of the trip is to meet with host nation officials, Ukrainian refugees, essential service providers, distribute aid and learn about the situation on the ground with an eye towards future relief efforts.

Consequently, this is a public purpose that is consistent with the established practices and mission of the County. The Commissioner will be engaged in his official capacity. The initiative is an objectively laudable public purposes for which public funds, or third-party funds, may be utilized.²

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

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 exceptions to the general gift solicitation ban are contained in subsections 2-11.1 (e)(2)(f) and (2)(g) of the County Ethics Code. Those provisions allow Commissioners and the Mayor to solicit gifts in the performance of her official duties for use solely by the County in conducting its official business. Also, Commissioners may solicit gifts on behalf of a nonprofit organization for use solely by the nonprofit.

² See generally INQ19-10 (Travel by County officials to Morocco to attend an event focused on expanding trade between Miami and Casablanca and predicated on the establishment of direct non-stop air travel between Miami International Airport and Casablanca, funded in part by the County and the American Chamber of Commerce in Morocco, does not constitute exploitation of official position.); INQ 2022-45 (Travel by County official to Spain on a County outbound international trade promotion trip, funded in part by CAMACOL does not constitute exploitation of official position.)

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.

For example, other specific holiday functions or to aid residents in need, the Commission has concluded that accepting and distributing 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)

However, the Ethics Commission recommends that local government officials 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 and exclusive 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.³ (RQO 06-05)

Likewise, in terms of the disbursement of the solicited contributions, the Ethics Commission has recommended against elected official “directed” awards. The disbursement of funds or the selection of donation recipients should include impartial third parties or organizations. In one recent instance, the Commission approved of the distribution of gift cards solicited by an elected official for needy elderly residents, when the recipients would be determined by County parks (PROS) employees who are familiar with this cohort that utilize park facilities and resources. (INQ 2020-13)

The County Ethics Code at Section 2-11.1(w) prohibits the acceptance by elected officials and employees of travel and travel-related expenses by vendors and other service providers doing business with the respective government. Moreover, the Ethics Commission has broadly interpreted the third-party funded travel prohibitions contained in subsection (w) of the County Ethics Code. (RQO 15-02)

³ Because nonprofits, for profit businesses, or persons that are solicited, may feel compelled to donate because of the official’s position, the soliciting official or her staff member 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.

This prohibition may be waived by a vote of the Board of County Commissioners in the following manner: there should be a discrete vote on the precise waiver apart from any other item or group of items; the identity of the donor contractor, vendor, service provider, bidder, or proposer must be disclosed; and the identity of the specific elected official(s) or employee(s) receiving the benefit should also be disclosed. (RQO 15-02) ⁴

Opinion:

Applying the reasoning of the previous opinions issued by the Ethics Commission to the facts here, the Chairperson of the County Commission and staff under his direction, may solicit charitable contributions (food, clothing, medicine, storage, air, and ground transportation) for Ukrainian citizens and others to who have fled to safe havens in neighboring countries, including Poland, Hungary, Slovakia, Romania, and Moldova, as a result of the Russian military invasion of Ukraine.

Solicitations of donations from private businesses should be broad based. Direct and exclusive solicitation of current or future County vendors and contractors should be avoided. These parties can be included as part of a larger solicitation that includes members of the general community.

Also, the disbursement of the solicited contributions should include the participation of objective third parties and the official should avoid “directed” awards. Using an international nonprofit NGO already engaged in the region to distribute donated material satisfies the objective third party recommended best practice.

As regards travel and lodging costs, the Chairperson may use County or third-party funds for this purpose. Third-party funds or services may not be accepted from persons or parties transacting or seeking to transact with the County upon a majority vote of the County Commission.

⁴ See also Section 112.3148(4), Florida Statutes (A local government elected official or any other person on his behalf is “prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual’s or procurement employee’s agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual’s or procurement employee’s agency, 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; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

He may accept donated travel related costs from nonprofit entities that are not County contractors or vendors including GEM.

We hope this opinion is of assistance and we remain available to discuss any matters addressed herein. Also, 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.