

Meyers, Robert (COE)

INQ 07-33

From: Meyers, Robert (COE)
Sent: Tuesday, February 27, 2007 10:53 AM
To: 'AWill88359@aol.com'
Subject: RE: Commission on Ethics Opinion

Andre,

Thank you for your request for opinion. As I understand it, the critical facts of the first question are that you are a City Councilman in Miami Gardens, where you own a business and you employ costumed marketers to promote your business. You further state that the marketers remain on the sidewalk in front of your business and they wear nothing to advertise your business and are not engaged in soliciting the public on behalf of your business. It has come to your attention that an ordinance may come before your City Council to prohibit the type of marketing your business conducts and you wish to know whether you may participate in the discussions and vote on this item.

It is important to note that the proposed ordinance is directed at all businesses operating within Miami Gardens; some which may currently utilize costumed marketers; others which may consider employing such marketers in the future and others which may never choose to promote their businesses in such a manner. Given the size of Miami Gardens and the number of businesses located within its boundaries, any impact the ordinance has on your business is undifferentiated from the impact such an ordinance change would have on other business owners. Granted, the number of businesses employing costumed marketers represents a subset of all the businesses in the city, but I suspect that the size of the class of business owners who promote their business in this way is sufficiently large. Therefore, any regulation imposed to restrict costumed marketers does not uniquely affect your business. This being the case, you may participate in any discussions related to this matter and vote on the item.

Your second question is whether an elected official who absents himself from a vote involving a quasi-judicial matter has to disclose any financial interest that he may have in that matter. The Ethics Commission has held consistently that under the voting conflicts section of the Miami-Dade County Code, a person who is not present at a meeting because he believes he has a conflict of interest does not have to disclose the nature of the conflict. However, under the annual financial disclosure rules that apply to elected officials, it is conceivable that the financial interest would have to be disclosed at a later date – when the official files his annual financial disclosure report with the State of Florida.

Please understand the above represents an opinion based on the facts you have provided me. Furthermore, if you wish the Ethics Commission to give you a formal opinion, I can put this item on our March 22nd agenda.

If you have any questions, please contact me at your earliest convenience.

Sincerely,

Robert Meyers, Executive Director
Miami-Dade Commission on Ethics and Public Trust
(305) 350-0613

From: AWill88359@aol.com [mailto:AWill88359@aol.com]
Sent: Thursday, February 22, 2007 11:43 AM
To: Meyers, Robert (COE)
Subject: Commission on Ethics Opinion

Robert,

As per our discussion today, I seek an opinion from the Commission on Ethics on the following issues:

2/27/2007

1. I am a City Councilman in the City of Miami Gardens and I own a business there which employs costumed marketers to promote the business. The employees wear an Uncle Sam costume or a Statue of Liberty costume and wave an American flag on the sidewalk in front of my business which is located on the corner of an intersection. The marketers do not enter the roadway or impede traffic. They do not wear any advertising for my business or solicit anyone so I do not violate the city's anti-solicitation ordinance which the city has tried to unsuccessfully enforce against me. I have been advised that another City Councilman will attempt to sponsor an ordinance at an upcoming Council meeting to prohibit marketing of the type that my business conducts (i.e. costumed characters?). You have advised that I can participate in the discussion on this proposed ordinance because it is a public policy issue and the ordinance will apply to other businesses or similarly situated entities in the city. Please confirm this position in writing for me.

2. You have also indicated that an elected official who is absent from a vote on a matter in a land use, zoning matter (i.e. a quasi-judicial hearing) does not have to disclose any financial interest that he may have in that matter. Please confirm this position in writing for me.

Thank you for returning my call so promptly.

Regards,

Andre' Williams

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