
Meyers, Robert (COE)

From: Louis Tertocha [ltertocha@arshtcenter.org]
Sent: Tuesday, June 10, 2008 3:42 PM
To: Meyers, Robert (COE)
Cc: Ricky Arriola; Lawrence J. Wilker; Valerie Riles-Robinson
Subject: RE: Complimentary Tickets

Good afternoon Robert: I passed your memorandum along and was requested to obtain your reply to the following specific questions: (1) Does the County Ethics law apply to the PACT Board? (2) If not, then is there any other County or State ordinance that would preclude the PACT Board members from accepting tickets? The PACT needs to know specifically whether there is a law/ordinance that prevents the PACT from doing so. Thank you for your cooperation, Louis.

Louis Tertocha, General Counsel
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From: Meyers, Robert (COE) [mailto:RMEYERS@miamidade.gov]
Sent: Monday, June 09, 2008 5:41 PM
To: Louis Tertocha
Subject: FW: Complimentary Tickets

Hi Louis:

Hope all is well with you. Attached you will find a memorandum I prepared in response to our meeting last week. If you need something more formal, please let me know.

Thanks,

Robert



Memo

This memorandum was emailed to Mr. Tertocha on June 9, 2008

To: Louis Tertocha, General Counsel
Performing Arts Center Trust
From: Robert Meyers, Executive Director
Miami-Dade Commission on Ethics and Public Trust
Date: 6/10/2008
Re: Complimentary Tickets

On June 3, 2008, you and your intern met with me in my office to discuss the provision of complimentary tickets for performances at the Center to the members of the Board of Directors of the Performing Arts Center Trust (PACT). I promised a response within the week and the following represents my thoughts on these matters. My response is based on a memorandum dated June 3, 2008 prepared by you which you shared with me on the same date.

In my opinion, the directors of the PACT are not covered by the county's Conflict of Interest and Code of Ethics Ordinance and I do not believe they would be covered by the Chapter 112 of the Florida Statutes, either. I will not ask the Miami-Dade Commission on Ethics and Public Trust to consider the question of the applicability of the local ethics code to the PACT directors unless you instruct me to take this item to the Ethics Commission.

In a nutshell, your memorandum presents four questions. The first question is whether the PACT can lawfully provide complimentary tickets to the members of the PACT's Board of Directors? We agreed that I should answer your questions as though the members are covered by the local ethics ordinance. The County ethics code establishes a reporting requirement for those individuals who receive gifts in excess of \$100 in any one quarter during a calendar year. The burden is on the recipient to report the gift and the donor has no disclosure requirement. Under the County Code, there is no cap on the size of a gift a donor can give to a local government official or employee. State law, however, limits the amount of a gift that a lobbyist may give to a reporting individual.

Your second question is whether there are any ethical issues, constraints or requirements that would preclude providing the tickets to the PACT Directors? This question is somewhat outside our purview, as it seems to be more a question regarding the propriety of providing the tickets and/or accepting the tickets. If the Directors were acting in their official capacities, such as a ground-breaking or an inaugural performance, it might be appropriate for them to receive complimentary tickets for those particular performances. For other performances, I believe it creates some serious "appearance" problems for complimentary tickets to be issued to the PACT Directors. Just to reiterate, there is nothing in the County ethics code prohibiting the distribution of these tickets or the acceptance of these tickets absent a quid pro quo arrangement.

Your third question is whether PACT's Directors would be deemed as public officials and/or as lobbyists and therefore subject to the purview of any lobbying statutes. As stated above, it is my contention that the Directors are not public officials and they are not lobbyists when appearing before the Board of County Commissioners on behalf of PACT.

Your final question is in the event that tickets are provided, are there any reporting requirements that would apply to the PACT Directors? Once again, this has been addressed in a prior paragraph, but I would like to provide more detail here. Under the County Code, one gift exceeding one hundred dollars or a series of gifts from the same donor in one quarter in excess of one hundred dollars triggers the reporting of the gift(s). For example, if an individual received three tickets from the same donor worth forty dollars per ticket, a reportable event has occurred. Gifts to spouses and other family members are not included in the total. In other words, a gift to a spouse cannot put the public official over the one hundred dollar threshold.

If you have any additional questions, or wish to discuss this with me in greater detail, please do not hesitate to contact me at your convenience.

MEMORANDUM

TO: Robert Meyers, Esq., Executive Director of Miami-Dade County Commission on Ethics & Public Trust

FROM: Louis Tertocha, Esq., General Counsel of the Performing Arts Center Trust, Inc. ("PACT")

DATE: June 3, 2008

RE: Provision of Complimentary Tickets to members of the Board of Directors of the PACT at the Adrienne Arsht Center for the Performing Arts of Miami-Dade County ("Center")

My office was directed to research the legality and any concomitant ethical issues pertaining to the provision of complimentary tickets of performances at the Center to the members of the Board of Directors of the PACT. The PACT was incorporated on August 6, 1991, as a Florida, not-for-profit, Section 501(c)(3), corporation, to operate and manage the Center. The Directors are appointed by both governmental entities and by the PACT. I have been asked to report the results of the research to the PACT Board at its next meeting. I have reviewed the applicable documents (Operating Management Agreement between the County and the PACT, the PACT's Articles of Incorporation and Bylaws) and have not discerned any prohibition. However, I wanted to secure an opinion from your office which addresses the following issues:

1. Whether the PACT can lawfully provide complimentary tickets to the members of the PACT's Board of Directors?
2. Whether there are any ethical issues, constraints or requirements that would preclude providing the tickets to the PACT Directors?
3. Whether the PACT's Directors would be deemed as public officials and/or as lobbyists and therefore subject to the purview of any lobbying statutes?
4. In the event that tickets are provided, are there any reporting requirements that would apply to the PACT Directors?

Thank you for your professional cooperation on this matter.

*Writer
answers
sent for week
to Louis*

Louis Tertocha

From: Mastin, Deborah (Aviation) [DMASTIN@miami-airport.com]
Sent: Friday, May 02, 2008 5:20 PM
To: Louis Tertocha
Cc: Valerie Riles-Robinson; Cuevas, Jr. R.A. (CAO); Price-Williams, Abigail (CAO)
Subject: RE: Performing Arts Center Trust, Inc. Request for Legal Opinion

Louis –

You have asked whether the PACT Board members must comply with the provision of Section 2-11.38 Code of Miami-Dade County, which requires that all members of County boards shall be permanent residents and electors of Miami-Dade County. It is the opinion of this office that PACT Board members are subject to the requirements of 2-11.38. I would be happy to discuss this with you further at your convenience.

Deborah

Deborah Bovarnick Mastin
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Miami Dade County Attorney
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From: Louis Tertocha [mailto:ltertocha@arshtcenter.org]
Sent: Monday, April 21, 2008 11:29 AM
To: Mastin, Deborah (Aviation)
Cc: Valerie Riles-Robinson
Subject: FW: Sec. 2-11.38

Deborah: The second issue is: Does the PACT Board have to comply with the residency requirements of the following ordinance? I have reviewed these ordinances with Valerie, and Parker has requested that we obtain an opinion from the County Attorney. We would appreciate a reply ASAP. Thank you, Louis.

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From: Valerie Riles-Robinson
Sent: Monday, April 21, 2008 11:04 AM
To: Louis Tertocha
Subject: FW: Sec. 2-11.38

6/3/2008

FYI

Per your request, the following is the legislation which corresponds to your question:

Sec. 2-11.38. Membership on boards.

All members of County boards shall be permanent residents and electors of Miami-Dade County unless the Board of County Commissioners, by a two-thirds vote of its membership, waives this requirement, and should have reputations for integrity and community service. In addition, all board members should have demonstrated an interest in the field, activity or sphere covered by the board. Each board shall include at least one (1) person whose livelihood does not depend on the area regulated, administered or dealt with by the board.

Unless the Board of County Commissioners by two-thirds vote of its membership waives the residency requirement, any member of County boards who ceases to be a resident of Miami-Dade County during the term of his or her office shall immediately advise the Clerk of the Board of County Commissioners. Upon being advised by the Clerk of such circumstances, the Board of County Commissioners shall declare the position to be vacant and shall promptly fill the same pursuant to the provisions of Section 2-11.38.1.

The primary consideration in appointing board members shall be to provide the board with the needed technical, professional, financial, business or administrative expertise. The membership of each board should be representative of the community at large and should reflect the gender, racial, ethnic and cultural make-up of the community.

Shania L. Moore

County Boards Coordinator

Clerk of the Board Division

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Louis Tertocha

From: Louis Tertocha
Sent: Monday, April 21, 2008 11:24 AM
To: Deborah Mastin (Aviation)
Cc: Valerie Riles-Robinson
Subject: FW: Sec. 2-11.38

Good morning Deborah: Chag sameach. Would you please provide an answer to this issue: Does the PACT Board constitute a "County Board" pursuant to the following ordinance? If the answer is in the affirmative, please specify why? If not, why not? I will send you another subsequent e-mail as a follow up momentarily. Thank you, Louis.

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From: Valerie Riles-Robinson
Sent: Monday, April 21, 2008 11:05 AM
To: Louis Tertocha
Subject: FW: Sec. 2-11.38

The flowing legislation defines a county board per legislation. In addition, I have added the Ordinances that correspond to this particular section:

Sec. 2-11.36.1. Definition of board.

(a) The term "board" is defined to include every agency, authority, advisory board, regulatory board, quasijudicial board, semiautonomous instrumentality, committee, task force or any other citizens' group created and funded in whole or in part by the Board of County Commissioners. The foregoing notwithstanding, this article shall not apply to citizen groups created for specific advisory purposes where such group's existence is limited to a period of less than one (1) year. Except as otherwise provided, "County boards" and "citizens' advisory groups" may only be created by action of the County Commission, and only the County Commission, as a body, may appoint the members of the such boards and groups.

(b) Notwithstanding the provisions of subsection (a) hereof, no board, committee, task force, or other citizens' group created by a County Commissioner for the purpose of advising him or her with regard to issues solely within his or her district shall be deemed a County "board" as that term is defined herein. Such a "district board" shall, however, be governed by Florida's "Government in the Sunshine Law," Section 286.011, Florida Statutes, and the County's and Florida's Code of Ethics Laws, Section 2-11.1 of the Code of Miami-Dade County and Chapter 112, III, Florida Statutes, as those laws may be amended from time to time.

(Ord. No. 80-136, § 2, 12-16-80; Ord. No. 88-120, § 1, 12-20-88; Ord. No. 91-46, § 1, 4-16-91; Ord. No. 94-42, § 1, 3-17-94)

Shania L. Moore

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