

Meyers, Robert (COE)

INQ 08-172

From: Meyers, Robert (COE)
Sent: Tuesday, November 04, 2008 1:46 PM
To: Meyers, Robert (COE)
Subject: Inquiry

I received a phone call from Lynn Dannheiser, City Attorney of Surfside, during the week of October 20-24 to discuss a letter that Mayor Burkett sent out to the residents advising them of meetings he had scheduled at Town Hall to go over the Town's ballot questions and other important issues. Mayor Burkett paid for the mailing out of his own pocket. The letter claims that Mayor Burkett will be the only politician present at the meeting, but the City Attorney told him that he must make it a public meeting and allow the elected officials in Surfside to speak if they wish to be recognized. I also had a conversation with Mayor Burkett about the same matter.

I agreed with Ms. Dannheiser that the meeting should be open to the public, but it was the Mayor's meeting to control and he did not have to give the councilmembers "equal time." I also indicated that I did not believe his correspondence amounted to electioneering communications, as he is an elected official offering his position on matters of concern in his town and it certainly did not represent exploitation of his official position, either. In part, exploitation of official position could not be charged because, among other things, there is no benefit that accrues to the mayor by holding these meetings.

I told the City Attorney that I did not believe Mayor Burkett had to pay for the mailings as long as he made it clear that the position he was taking on these issues was his alone and did not represent the views of the entire government. Victoria Frigo did some research on this subject and reached the same conclusion.

Robert Meyers
November 4, 2008

MEMO

TO: Robert
FROM: Victoria
DATE: Oct. 23, 2008
RE: Surfside Mayor's Advocacy

Researching today on "government advocacy" did not reveal any additional information since the last time we looked at this issue a few years ago. Since Florida is in the minority on government advocacy, little case law exists nationwide on these questions. In sum—

- GOVERNMENT LEADERS MAY ADVOCATE. Neutrality is not required in Florida, although most other states restrict governments to neutral education. As Justice Kogan said in PATRM—

[L]ocal governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. **Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose.** The people elect governmental leaders precisely for this purpose. People Against Tax Revenue Mismanagement, Inc. (PATRM) v. Co. of Leon, 583 So. 2d 1373, 1375 (Fla. 1991). (Emphasis added.)

- THE RIGHT TO EXPRESS THE MINORITY POSITION is not directly addressed in PATRM, but is implied in *dicta*. Responding to the argument that government should maintain a neutral position, Justice Kogan wrote—

Such a position...is tantamount to saying that governmental **officials may never use their offices** to express an opinion about the best interests of the community simply because the matter is *open to debate*. A rule to that effect would render government feckless. One duty of a democratic government is to **lead the people to make informed choices through fair persuasion**. *Id.* at 1375. (Emphasis added.)

- SPENDING PUBLIC MONEY FOR ADVOCACY is not addressed in PATRM, but the Florida Attorney General in Opinion AGO 98-33 cautioned Putnam County Commissions to make legislative findings to ascertain that funds being spent for government advocacy served a public purpose and to adopt sufficient safeguards to ensure that the funds were used for the purpose for which they were intended.



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October 13, 2008

Hello All,

On November 4th, Surfside has a few noteworthy issues that will be on the ballot.

While I've tried to keep you informed in the Gazette over the months, I have also tried to meet or speak with many of you individually about these issues in order to convey my perception of their impact and to learn how you feel about them. My going house to house however has not been as effective as I would have liked, so I have arranged for you and I to be able to meet in a round table setting at Town Hall in the Commission Chambers on the following dates:

**SATURDAY, OCTOBER 25TH, AT 10:30 AM
SUNDAY, OCTOBER 26TH, AT 10:30 AM
WEDNESDAY, OCTOBER 29TH, AT 7:00 PM**

At this meeting, there will be no politics or politicians other than myself. There will, however, be frank, candid and straightforward assessments and answers to your questions regarding the issues in our Town.

The topics will include, but of course not be limited to, the following:

- 1) **THE COMMUNITY CENTER / \$16.5 M BOND ISSUE:**
While I've expressed concerns for a long time about going into such debt at this very dangerous time and had asked the Commission to have offered a 3rd alternative on the ballot that would have allowed voters the choice of avoiding borrowing the \$16.5M and build the pool/scaled down center with already available funds, I am committed to doing whatever the majority of voters decide in the election. Clearly, I wish that the Commission had not reversed their vote on my straw ballot initiative regarding the center, as we would have known long ago what our residents' position was on the issue. Be that as it may, we will know soon.
- 2) **SWITCHING TO THE MIAMI BEACH FIRE DEPARTMENT:**
Now more than ever, saving millions of dollars, each year, and providing safe and reliable fire services is something I hope voters will carefully consider and vote for. Voting for this initiative doesn't mean we have to go with only Miami Beach forever, it just preserves all our options into the future. Voting against this idea however means we'll never have any other option but to use the County and pay whatever they wish to charge--otherwise known as a Monopoly situation. Simply, a yes vote preserves our right to choose and retain all of our options!

Other important issues to discuss are:

**THE BEACH WALK-- BURYING THE POWER LINES-- ELIMINATING
COMMISSION SEATS IN FAVOR OF THE HIGHEST VOTE GETTER-- HOTELS ON
HARDING AVENUE-- PROPOSED TAX INCREASES FOR HOMEOWNERS--
THE FEMA DISASTER THAT IS UNFOLDING IN OUR TOWN AND ANYTHING ELSE
ON THE MINDS OF RESIDENTS.**

I very much look forward to the opportunity to share with you whatever information I have and to help you be as informed in this upcoming election as possible.

By the way, if you can't make it, you can always call or write. I'd be happy to come to you!

As usual, all the best,

Charlie