

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Tuesday, April 19, 2011 4:31 PM
To: 'mayorstoddard@gmail.com'
Cc: 'addyd@fiu.edu'; Meyers, Robert (COE)
Subject: RE: RQO on commissioner's vote for attorney contract

Dear Dr. Stoddard,

In response to your request for an ethics opinion on April 14, 2011, Robert Meyers has discussed your issues with me and asked me to respond.

I'm sorry that the Ethics Commission cannot provide an ethics opinion to you about Commissioner Velma Palmer's or City Attorney Thomas Pepe's past conduct. Ethics opinions are given only to those individuals seeking guidance about their own future conduct.

The County Code states at Sec. 2-1074 (y)—

Any person within the Ethics Commission's jurisdiction, when in doubt about the applicability or interpretation of any provision within the Ethics Commission's jurisdiction, **to himself or herself in a particular context**, may submit in writing the facts of the situation to the Ethics Commission with a request for an advisory opinion to establish the standard of public duty, if any.... Such opinion, until amended or revoked, **shall be binding on the conduct of the official or candidate who sought the opinion**.... (Emphasis added.)

You are welcome to appear and discuss your request directly with the Ethics Commissioners, who will be meeting in public session on Thursday, April 28, at 10:00 AM. However, based on the facts you've presented, my legal advice to the Ethics Commission would be to follow the mandates prescribed in its enabling ordinance, cited above.

If you would like to discuss this matter in greater detail with Robert Meyers (305 350-0613) or me (305 350-0601), please feel free to call either of us at our direct numbers.

Sincerely,

VICTORIA FRIGO, STAFF ATTORNEY
 MIAMI-DADE COUNTY COMMISSION ON ETHICS
 DIRECT PHONE: 305 350-0601
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From: Mayor Stoddard [mailto:mayorstoddard@gmail.com]
Sent: Thursday, April 14, 2011 6:33 PM
To: Meyers, Robert (COE)
Subject: RQO on commissioner's vote for attorney contract

4/19/2011

Dear Robert Meyers,

This note constitutes my Request for Opinion from the Miami-Dade County Commission on Ethics and Public Trust concerning a possible conflict of interest relating to an incompletely disclosed financial deal that could be construed as a gift.

The City of South Miami recently sought to hire an interim City Attorney. At the City Commission meeting of 15 March, 2011, the name of Mr. Thomas Pepe, Esq. was proposed by City Commissioner Walter Harris, himself personal friend of Mr. Pepe for the past 10 years. Mr. Harris gave the commission a copy of Mr. Pepe's job application (which I was seeing for the first time), and asked us to vote on his hire, which would carry a salary of \$200,000 a year.

Mr. Pepe's job application contained a disclosure statement (attached), in which he stated that he had represented South Miami City Commissioner Velma Palmer in a legal dispute over her election in Feb. 2009. *[the basic story: the County Elections Dept had possibly disenfranchised some possible voters in South Miami by erroneously sending them notices stating they were not city residents. Her opponent had challenged the election by suing Commissioner Palmer, and Mr. Pepe had successfully defended Commissioner Palmer, allowing her to retain her elected seat for the next four years.]* Mr. Pepe's disclosure statement (attached below) explained that the case had been resolved and he had no further financial claim against Commissioner Palmer, and thus she had no conflict of interest in voting on his hire.

Commissioner Palmer asked the City's Deputy City Attorney, Mark Goldstein, whether she had a conflict of interest in voting for Mr. Pepe's hire. Mr. Goldstein asked Commissioner Palmer whether she had any ongoing financial or professional relationship with Mr. Pepe, to which Commissioner Palmer replied that she did not. On that basis, Mr. Goldstein concluded that Commissioner Palmer had no conflict of interest. Commissioner Palmer then voted in favor of awarding Mr. Pepe the City contract.

On 27 March 2011, I met in private with Mr. Pepe to learn more details of his financial relationship with Commissioner Palmer. In response to my direct questions, Mr. Pepe informed me that that the value of his legal services representing Commissioner Palmer had been about \$40,000. I was aware that Commissioner Palmer's opponent, Rene Guim, had paid his attorney's \$125,000 in legal expenses. Mr. Pepe explained that a prosecution typically costs more than a defense. I asked how much of that \$40,000 Mr. Pepe had been paid by Commissioner Palmer, and Mr. Pepe informed me that Commissioner Palmer had paid him only \$6000. However, in August of 2008, Commissioner Palmer assigned to Mr. Pepe her possible claims against Miami Dade County and against the City of South Miami, third party beneficiary rights. In exchange, Mr. Pepe declared that Commissioner Palmer had resolved her debt for his legal services. A copy of that agreement is attached. It mentions no stated cash value for the third party rights of claim against the County or City.

Mr. Pepe explained to me that he never pursued this legal claim with Miami-Dade County or the City of South Miami for three reasons: (1) he was not confident he would prevail in the case since the City and County had no formal contract for election services, (2) because the time required for him to sue would be considerable, and (3) the County could easily absorb their defense costs within their existing legal budget. He did not discuss his options for suing the City of South Miami. He did tell me that the statute of limitations on such cases was four years, and thus he had a year left to exercise his option.

If we are not to consider the forgiveness of the \$34,000 legal debt an undisclosed gift to Commissioner Palmer, we would have to accept the premise that \$34,000 worth of uncollected 3rd party beneficiary

rights constitute equal compensation for \$34,000 in legal services. These rights have certainly proven worthless to date. As Mr. Pepe had stated to me, a prosecution costs more than a defense. Had these rights significant monetary value, Mr. Pepe could have hired a lawyer on contingency to pursue his case. In my view, the difference in value between what Commissioner Palmer owed Mr. Pepe (~\$34,000), and the value of the 3rd party beneficiary rights she transferred to him (~\$0) would have constituted a gift worth the difference in their value, approximately \$34,000. While the financial debt may be legally satisfied with the transfer of those third party beneficiary rights, at best the financial debt for legal services has been transformed into a social debt that is carried forward. Certainly Commissioner Palmer could not forget that she would not have retained her Commission seat and her \$12,000/year Commissioner's salary had she not received effective legal defense from Mr. Pepe for which she had paid only \$6000 instead of \$40,000.

- 1. I am concerned when a prospective City Attorney neglects to mention that he negated \$34,000 worth of uncompensated services to a sitting Commissioner who was to vote on his award of a \$200k/year City contract.**
- 2. I am concerned when a sitting Commissioner, when asked specifically about her financial relationship with the candidate for whom she is voting, neglects to disclose that 2.5 years prior, the candidate legally absolved her of a \$34,000 debt.**
- 3. I am concerned when a sitting Commissioner votes to award a \$200,000/year contract to someone who just 2.5 years prior absolved her of a \$34,000 debt.**
- 4. I am concerned that the third party beneficiary rights the attorney candidate accepted from the Commissioner were effectively worthless, and thus his absolution of her debt constituted a gift that was never publicly disclosed and which could have influenced the Commissioner's vote.**

Were Mr. Pepe and Commissioner Palmer justified in claiming that, because they had no ongoing financial or professional relationship, Commissioner Palmer had no conflict of interest in voting on Mr. Pepe's contract? Acting upon the advice of Dawn Addy (who told me that knowing what I did, I was obliged to inform the public), I raised this question on 24 March 2011, at a recent workshop of the City Commission (see attached article from the Miami Herald). Three members of my Commission and Mr. Pepe voiced the opinion that there was no conflict in Commissioner Palmer voting on Mr. Pepe's contract because their financial dealings had been previously resolved. It should be noted that Commissioner Beasley declined public comment on the matter but voted against the contract. I remain concerned that the forgiveness of debt constitutes a social obligation that creates a conflict of interest.

I request from you an opinion on:

- (1) whether Mr. Pepe and Commissioner Palmer were obliged to reveal their full financial arrangement in advance of a vote on Mr. Pepe's contract,
- (2) whether Commissioner Palmer had a sufficient conflict of interest that she should not have voted on this contract, and
- (3) whether the absolution of \$34,000 debt in exchange for transfer of worthless third party beneficiary rights constituted a gift subject to disclosure rules.

Please find 3 attachments:

Disclosure statement in Mr. Pepe's job application.

Third party transfer agreement between Velma Palmer & Thomas Pepe.

Miami Herald article

Sincerely,

Philip Stoddard

Dr. Philip K. Stoddard
Mayor of South Miami
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