
From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, December 12, 2014 9:57 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: MDC Commissioner Daniella Levine Cava (Gifts) INQ 14-285

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From: Centorino, Joseph (COE)
Sent: Thursday, December 11, 2014 5:27 PM
To: Ochoa, Martha (DIST8)
Cc: Diaz-Greco, Gilma M. (COE); Sanchez, Gerald (CAO)
Subject: INQ - MDC Commissioner Daniella Levine Cava (Gifts)

Ms. Ochoa:

You have inquired on behalf of Miami-Dade County Commissioner Daniella Levine Cava concerning any ethical issues raised by her acceptance of the following gifts, given to her for distribution, in her discretion, to worthy recipients:

- 1) Two Gift basket donated by the Miami Marlins organization
- 2) Eight turkey donated by a private citizen who does not do business with the County

There is no prohibition in the Miami-Dade County Code against Commissioner Levine Cava's acceptance of these gifts for such distribution, assuming, as I will, that there is no contemplated quid pro quo for any governmental action on her part. It also appears that the gifts are given for a worthy community cause. However, since the items in question, as I understand it, are not being given to the County government and given not for the benefit of any specific cause or organization, but are given to the Commissioner to dispose of in her discretion, they do have the indicia of gifts given to her which, if valued at more than \$100 in total from either donor, should be disclosed by her pursuant to Section 2.11.1(4) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, as well as Chapter 112, Florida Statutes.

Regarding the gift from the Marlins, I have an additional concern based on Section 112.3148, Florida Statutes. The latter statute would prohibit an elected official from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's agency, if the gift has a value in excess of \$100, unless the gift is accepted by such person on behalf of a governmental organization or a charitable organization. Since this is a state statute, it is not enforced by, and cannot be the subject of, a binding opinion from my agency, but is rather under the jurisdiction of the Florida Commission on Ethics.

I did take the time to telephone and speak with the General Counsel of the Florida Ethics Commission who also expressed some concern that the gift from the Marlins, which is a County vendor, could be interpreted as falling within the prohibition of Section 112.3148. Since the gift baskets are being given directly to the Commissioner for her disposal without any intermediate involvement on either end by the County or any charitable organization, the exceptions for gifts to a governmental entity or a charitable organization under that section do not appear to apply. The statute in question is a fairly recent one without much in the way of interpretation or precedent. The General Counsel added that at least one elected official has been the subject of an investigation for accepting gifts under somewhat similar circumstances, though in that instance the official involved was cleared of a violation. Nonetheless, since each case is fact specific, it cannot be said with any certainty that this scenario falls squarely with that precedent.

The Florida Commission General Counsel, while not opining on the legality of the gift, was in accord with my opinion that the best way for this to be handled, short of the Commissioner's asking for a definitive opinion on it from the Florida Commission on Ethics, would be to take a conservative view of the statute and not accept the gift. Additionally, he was

of the opinion that the acceptance of the gifts by the Commissioner under either of the above scenarios, would, assuming a value in excess of \$100, trigger the requirement that they be reported under Florida law.

Please advise if you have any further questions concerning this matter.

Sincerely,

Joseph M. Centorino

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