

County Commissioner Juan Zapata withdrew his request for an ethics opinion in an email (attached to this memo) to Executive Director Joseph Centorino on 10/9/13.

MIAMI-DADE COMMISSION ON ETHICS MEMORANDUM

TO: Miami-Dade Commission on Ethics
FROM: Victoria Frigo, Senior Staff Attorney
SUBJECT: RQO 13-10 Commissioner Juan C. Zapata, District 11
Fundraising Activities by County Commissioners
County Ethics Code at Secs. 2-11.1 (d), (e), (g), (l), (n)
DATE: Oct. 10, 2013

I. ISSUE

May a County Commissioner use his official position to engage in fundraising activities in the private sector in order to help finance various public projects in the district that he represents?

II. Brief Answer

GENERALLY, YES. The County Ethics Code at Sec. 2-11.1 (e)(2)(f) allows County Commissioners to solicit gifts on behalf of the County in the performance of their official duties for use solely by the County to conduct its official business. Additionally, Sec. 2-11.1 (e)(2)(g) allows County Commissioners and their staffs to solicit gifts on behalf of 501(c)(3) nonprofit entities.

Nevertheless, because these solicitations could create the perception of possible *quid pro quo* arrangements, the Board of County Commissioners should adopt several safeguards to avoid appearances of impropriety in the proposed solicitation and funding processes.

III. BACKGROUND

County Commissioner Juan Zapata represents District 11. District 11 is entirely unincorporated and depends on funding through the Unincorporated Municipal Service Area (UMSA) budget.

The Commissioner wishes to raise private-sector funds to finance public infrastructure projects and other programs in District 11 that serve a public purpose, such as sports and beautification activities.

The Commissioner would also like to solicit private-sector financing on behalf of the Florida International University (FIU) Foundation. Using funds solicited on behalf of the Foundation, Commissioner Zapata would direct FIU to develop a strategic master plan to address service and infrastructure deficiencies in District 11. The FIU Foundation is a 501(c)(3) nonprofit entity.

IV. LEGAL ANALYSIS

Several sections of the County Ethics Code are implicated in the solicitation of funds from the private sector as described by Commissioner Zapata.

Section 2-11.1 (e), Gifts

- A. Although the gift ordinance generally prohibits the solicitation of gifts by public officials, gifts that will be used by the County may be solicited:

[G]ifts solicited by Commissioners on behalf of the County in performance of their official duties for use solely by the County in conducting its official business [are exempt from the ban on soliciting gifts].¹

Consequently, because solicitations that benefit the County are allowed under the County gift ordinance, Commissioner Zapata is not barred from engaging in fundraising activities to benefit County infrastructure projects as well as community events and related public projects in the County.

- B. The gift ordinance further allows Commissioners to solicit gifts on behalf of 501(c)(3) nonprofit entities:

[G]ifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner nor his or her staff receives any compensation as a result of the solicitation [are exempt from the ban on soliciting gifts].²

Because the FIU Foundation is a 501(c)(3) entity, fundraising on behalf of the Foundation is allowed under the County Ethics Code. Consequently, Commissioner Zapata may solicit donations that will allow the Foundation to finance the development of a strategic master plan by FIU to address service and infrastructure deficiencies in District 11.

Section 2-11.1 (d), Voting Conflicts

County Commissioners are prohibited from voting on or otherwise participating in any matter in which they—

would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners....

¹ Miami-Dade County Code at Sec. 2-11.1(e)(2)(f).

² "As used in this subsection, a 'nonprofit organization' shall mean any entity described in section 501(c)(3) of the Internal Revenue Code...." Miami-Dade County Code at Sec. 2-11.1(e)(2)(g).

Therefore, Commissioner Zapata is advised to use caution when soliciting funding for projects in order to avoid benefiting his own special private interests or the interests of his immediate family members or business associates.

Section 2-11.1 (g), *Exploitation of Official Position*

[No County official or employee] shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted by the Board of County Commissioners.

Based on the above proviso, Commissioner Zapata is advised to avoid any situation in which he might appear to be influencing the funding process in order to specially benefit himself, an immediate family member, a business associate, or political supporter.

Section 2-11.1 (l), *Prohibited Investments*

[No County official or employee] shall have personal investments in any enterprise, either himself, or through a member of his or her immediate family, which will create a substantial conflict between his or her private interests and the public interest.

Section 2-11.1 (n), *Actions Prohibited when Financial Interests are Involved*

[No County official or employee] shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest.

Based on the requirements stated above, Commissioner Zapata must take precautions when soliciting private funds or selecting programs to be funded that his action not impact any business or other financial investment interests that he or any member of his immediate family may have.

V. CONCLUSION

Legally Permissible Actions

- A. The County Ethics Code at Sec. 2-11.1 (e)(2)(f) specifically allows Commissioner Zapata to solicit gifts on behalf of the County in the performance of his official duties for use solely by the County to conduct its official business.
- B. Commissioner Zapata may also solicit funds on behalf of the FIU Foundation because solicitations on behalf of 501(c)(3) entities are allowed under Sec. 2-11.1 (e)(2)(g) of the County Ethics Code.

Recommendations to Avoid Appearances of Impropriety

- A. Regarding *contributors* from the private sector, Commissioner Zapata should take steps to avoid any perception that contributors to government projects are doing so in order to curry favor with him or County government regarding any matters before the County in which the contributors themselves may have special interests. This would apply particularly to the involvement of County lobbyists, County contractors, or County vendors.
- B. Regarding the *choice of projects* to be funded, care should be taken to avoid a perception that the designation of projects funded by the private sector are connected to campaign contributions or political supporters.
- C. Finally, if the funding program suggested by Commissioner Zapata is adopted or otherwise permitted by the Board of County Commissioners, the following safeguards should be adopted:
 1. Projects should be funded throughout *all* of the UMSA in the County, rather than limited to projects within District 11;
 2. Elected officials should *not* be directly involved in the solicitation of funds for the program. Any solicitations or promotional activities should be carried out by one or more designated County employees under the supervision of the Mayor or his designee;
 3. County lobbyists, County contractors, and County vendors should *not* be solicited for contributions to the fund, but unsolicited donations from such individuals or entities could be accepted.
 4. The decision to include or exclude any particular project from those that may be funded under this program should be made by the Board of County Commissioners, or, where permissible, by administrative personnel in the appropriate department under the supervision of the Mayor or his designee.

The County Ethics Code constitutes “a minimum standard of ethical conduct and behavior”³ for elected officials and does not address “appearance of impropriety” issues, which ultimately must guide official actions. Particularly because the solicitation and funding plan proposed by Commissioner Zapata involves potential financial benefits to both the County as well as to private entities and individuals, every effort must be made to avoid the perception that private interests supersede the public’s interests.

³ Miami-Dade County Code at Sec. 2-11.1(a).

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Wednesday, October 09, 2013 3:30 PM
To: Frigo, Victoria (COE)
Subject: FW: Memo on Zapata opinion

From: Escobar, Bernardo (DIST11)
Sent: Wednesday, October 09, 2013 3:29 PM
To: Centorino, Joseph (COE)
Subject: RE: Memo on Zapata opinion

Good Afternoon Mr. Centorino,

I would respectfully request that you withdraw from tomorrow's agenda of the Ethics Commission Draft RQO 13-10.

Thank you in advance for your kind assistance.

Bernardo Escobar

On behalf of Commissioner Juan Zapata

From: Centorino, Joseph (COE)
Sent: Wednesday, October 09, 2013 2:44 PM
To: Sanchez, Gerald (CAO); Escobar, Bernardo (DIST11)
Subject: Memo on Zapata opinion