

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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February 13, 2015

Thomas Pepe, Esq.
1450 Madruga Avenue, Suite 202
Coral Gables, Florida 33146

RE: RQO 14-04 Thomas Pepe, City Attorney, City of South Miami
See County Ethics Code at Sec. 2-11.1 (s)

Dear Mr. Pepe:

You inquired regarding the meaning of the term "special compensation" as it is used in the County Ethics Code with respect to lobbying by principals and employees of not-for-profit organizations.

In a public meeting on December 10, 2014, the Miami-Dade County Ethics Commission opined that under the Miami-Dade County Code of Ethics (County Ethics Code) at Sections (s)(1)(b) and (s)(4), the term "special compensation" encompasses compensation that is separate or additional to regular compensation for a not-for-profit's principal or employee, and that principals or employees of not-for-profit organizations who appear on behalf of not-for-profit organizations without special compensation as defined herein, are exempted from lobbyist registration if they are appearing in front of public officers **only to seek a grant**. Appearance by principals or employees of not-for-profit organizations without special compensation in front of the Mayor or a public body to lobby on matters other than grant funding requires registration as a lobbyist.

The County Ethics Code regulates lobbying requirements for persons appearing on behalf of not-for-profit organizations. In particular, lobbying on behalf of not-for-profit entities is addressed in the following sections of the County Ethics Code:

(s)(1)(b) "Lobbyist" specifically excludes *inter alia*: any person who only appears as a representative of a not-for-profit community based organization **for the purpose of requesting a grant** without special compensation or reimbursement for the appearance. (Emphasis added.)¹

(s)(4) Any person who only appears as a representative of a not-for-profit corporation or entity (such as a charitable organization, or a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect or

¹ Pursuant to the Miami-Dade Code at Sec. 2-11.1(s)(1)(b) the term "Lobbyist" specifically includes both principals and employees who lobby.

contingent, **to express support of or opposition to any item**, shall register with the Clerk *as required by this subsection, but, upon request, shall not be required to pay any registration fees...* (Emphasis added.)

The term “special compensation” is not defined in the County Ethics Code or under Florida Law. However, where terms in an ordinance are undefined, they are given their ordinary meaning which may be ascertained by reference to dictionary definitions.² Furthermore, rules of statutory interpretation postulate that statutory context and surrounding phrases often give meaning to an undefined term.³

Black’s Law Dictionary defines the term “special” in part as “designed for a particular purpose; and as unusual or extraordinary.”⁴ On the other hand, “regular” is defined in Black’s Law Dictionary in part as “usual, normal, or customary as opposed to occasional, special, or incidental.”⁵

Based on the ordinary meaning of the word “special”, particularly in contrast to its opposite “regular”, the term “special compensation” when used in the County Ethics Code means compensation that is different or in addition to regular compensation, and is designed or confined to a particular purpose.⁶

The Ethics Commission thus concluded that pursuant to the County Code of Ethics at Section (s)(1)(b), “special compensation” or reimbursement means compensation that is different or in addition to regular wages and that is paid for the particular purpose, i.e. to obtain the grant. Consequently, principals and employees of not-for-profit community based organizations who appear on behalf of that organization for the purpose of **requesting a grant** without special compensation or reimbursement for the appearance are exempt from the definition of lobbyist.

² See *Bolanos v. Workforce Alliance*, 23 So. 3d 171 (Fla. 1st DCA 2009).

³ See, e.g., *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 120 S.Ct. 1291 (2000)

⁴ Black’s Law Dictionary, p. 1524 (2009 ed.).

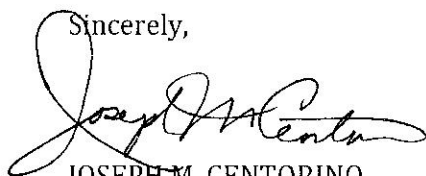
⁵ *Id.* at p. 1682 (2009 ed.).

⁶ In the absence of a definition of the term “special compensation” in the County Ethics Code or under Florida law, guidance was sought from court cases which have interpreted the meaning of the term “special compensation” in analogous contexts. For example; the Tenth Circuit Court of Appeal’s recent opinion in the *Thomas v. Metro. Life* case (See *Thomas v. Metro. Life Ins. Co.*, 631 F. 3d 1153 (10th Cir. 2011)) examined the meaning of the term “special compensation” in the Investment Advisors Act. The Investment Advisors Act exempts from the definition of Investment Advisor “any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor.” In the *Thomas v. Metro* case, the Court found that “special compensation” means compensation received specifically for investment advice in a form other than traditional commissions or analogous transaction-based compensation. Thus, the Court concluded that the natural reading of the phrase “special compensation” is compensation other than that received in the normal course of a broker-dealer’s business. Florida has a similar provision. Section 517.021, Florida Statutes (2014), provides that the definition of “investment advisor” exempts “a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.”

The Ethics Commission further opined that pursuant to Code of Ethics at Section (s)(4), principals and employees of not-for-profit organizations appearing without special compensation in front of the Mayor or a public body to lobby on matters **other than grant funding** would be required to register as lobbyists but would be exempt from paying the registration fee. Special compensation would mean compensation that is different or in addition to regular wages and that is paid for the particular purpose, i.e. to express support of or opposition to any item.⁷

This opinion construes the Miami-Dade County Ethics Code and is not applicable to other conflicts under County or State laws. Inquiries regarding possible conflicts under State ethics laws should be directed to the State of Florida Commission on Ethics.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph M. Centorino", written in a cursive style.

JOSEPH M. CENTORINO

Executive Director

⁷ Given that lobbyist registration is required for principals and employees under the circumstances defined herein, it follows that the exemption from paying the lobbyist registration fee does not however exempt such representatives of not-for-profit organization from the requirement that lobbyists take the County ethics training course within 60 days of registering or from paying the \$100 fee for the course. See the Miami-Dade County Code at § 2-11.1 (s)(2)(d), and INQ 13-180.