



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Alana Fernandez, Special Projects Administrator 2
Miami-Dade Water and Sewer Department

FROM: Martha D. Perez, Temporary Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-112; Section 2-11.1(e), County Ethics Code- Solicitation of Gifts

DATE: June 18, 2024

CC: All COE Legal Staff;

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning solicitation of sponsorships by the Miami-Dade Water and Sewer Department (WASD).

Facts

You are the Special Projects Administrator 2 for WASD. You are requesting guidance on behalf of WASD Director Coley on whether the department may request donations from private companies to fund a Centennial Celebration event at its Hialeah Water Treatment Plant.

Issue

Whether the County may request donations from private companies to fund a County event.

Analysis

Section 2-11.1(e) of the County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) limits the solicitation and receipt of gifts by County employees. *See* County Ethics Code § 2-11.1(e)(3). The term “gift” is defined as, “the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.” County Ethics Code § 2-11.1(e)(1). County officers and employees

are prohibited from soliciting or demanding a gift, nor may a County officer or employee accept or agree to accept any gift because of “[a]n official public action taken, or to be taken, or which could be taken; [a] legal duty performed or to be performed, or which could be performed; or [a] legal duty violated or to be violated” County Ethics Code § 2-11.1(e)(3). However, County employees can solicit and accept donations “on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business,” and those donations are not considered “gifts” under the County Ethics Code. *See* County Ethics Code § 2-11.1(e)(2)(e); RQO 02-70 (“Although the donations [to the City of West Miami] are in the form of money and are received without consideration, they are not gifts under the ordinance since the money is used for city purposes and is allocated for specific city projects.”).

As such, donations to the County or one of its subordinate entities for a public purpose is not prohibited or reportable as a “gift” under the County Ethics Code so long as no *quid pro quo* activity takes place or is anticipated to take place as a result of the donation. *See* RQO 05-119; INQ 20-113; INQ 18-124. *Quid pro quo* activity has been construed to mean official action of a county official or employee. *See* INQ 20-113; INQ 18-124; *see also* County Ethics Code § 2-11.1(e)(3). For example, in the past Microsoft provided, at no cost to the County, technical support valued at \$10,000.00 for Microsoft products used by the Miami-Dade County Information Technology Department (“ITD”), and this did not give rise to a conflict of interest because the free technical support was used by County employees solely in the performance of their official duties in furtherance of official County business. *See* INQ 13-39. Here, there does not appear to be any *quid pro quo* activity anticipated by the transaction with the private companies; rather, there is no expectation by WASD to engage in any business with these companies or vice versa as a result of this collaboration. *See* RQO 05-119; INQ 20-113.

The County and its officers and employees specifically designated by ordinance may solicit donations or charitable contributions from private individuals and businesses to further official County business, but only so long as the solicitation is broad based. *See* County Ethics Code § 2-11.1(e)(2)e; INQ 20-131. “The Ethics Commission has cautioned against direct solicitation of current or future County vendors and contractors, while recognizing that these parties can be part of a larger solicitation that includes members of the general community.” *Id.* (citing RQO 06-05). This proposed solicitation of donations appears to be broad based and not specifically geared toward current or future County vendors, and as such would not give rise to an appearance of impropriety. *See* INQ 20-131.

Opinion

Based on the facts presented here and discussed above, WASD may solicit gratuitous sponsorships from private companies to fund a centennial celebration event at the Hialeah Water Treatment Plant because the solicited donations will be in furtherance of WASD’s official business, and because there is no *quid pro quo* activity taking place or anticipated by the provision of the fundraising/ sponsorship services. *See* RQO 02-70; INQ 13-114. Further, because the solicitation is not a “gift” as defined by the County Ethics Code, no disclosure is required under the County Ethics Code. *See* County Ethics Code §§ 2-11.1(e)(2)(e), (e)(4); INQ 20-113.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.