



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Edward Erickson, firefighter
Miami-Dade Fire Rescue Department

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-132, Section 2-11.1(e), Gifts.

DATE: August 1, 2024

CC: All COE Legal Staff; Ivonne Villar, MDFR Chief Legal Liaison

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding County employees soliciting donations for a legal defense fund.

Facts

You are employed as a firefighter with Miami-Dade Fire Rescue (“MDFR”) but you are currently on assignment working in community health and resiliency for the Miami-Dade Office of Emergency Management (“OEM”).

You stated that you were disciplined by MDFR several years ago and forced to retain an attorney to help you get the discipline rescinded. You state you spent \$150,000 of your personal money on attorney’s fees.

You would like to set up a GoFundMe account to solicit donations to help you recover the attorney’s fees you paid and also to help you raise awareness about what you say are unfair disciplinary practices at the County. You may, in the future, set up a non-profit to work on issues surrounding the mass shooting at Marjory Stoneman Douglas High School, which your children attended.

Issue

Whether the Miami-Dade Conflict of Interest and Code of Ethics Ordinance (“Ethics Code”) permits you to solicit money via the GoFundMe platform to reimburse yourself for legal costs.

Analysis

The Ethics Code defines gifts 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. Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

Section 2-11.1(e)(1), Ethics Code.

Regarding gifts, the Ethics Code states that County employees “shall neither solicit nor demand any gift.” Section 2-11.1(e)(3). This prohibition is broad, with limited exceptions that do not apply in this context. As an example, campaign contributions and presents from family members are not considered gifts under the Ethics Code. *See* Section 2-11.1(e)(2)(a) and (b), Ethics Code.

The Ethics Commission has found that “all donations to a Legal Defense Fund are gifts.” RQO 08-15. In that opinion and two others, the Commission found a Legal Defense Fund was permissible if it was set up as a trust. *See id*; RQO 08-03; RQO 01-131. While opinions of the Florida Ethics Commission are not binding on the Miami-Dade Ethics Commission, they are often instructive. For example, in CEO 98-08, the Florida Ethics Commission found that donations made to a legislator’s legal defense fund were gifts to the legislator under state law, because they were being made to the fund on behalf of the legislator. *See* CEO 98-08.

Because County employees are expressly prohibited from soliciting gifts for themselves, the Ethics Commission has required Legal Defense Funds to be set up by a third party unrelated to the beneficiary and maintained as a trust. *See* RQO 08-15; RQO 08-03; RQO 01-131. Similarly, CEO 98-08 permitted a Legal Defense Fund to be set up when it was specifically proposed as a fund set up by a third party who was not a public official and who would solicit the donations and direct payments from the fund to be made directly to the attorneys.

The Commission has found that a blind trust Legal Defense Fund would violate the reporting requirements of Section 2-11.1(e)(5), which requires all individuals covered by the Ethics Code to report all gifts worth more than \$100 in any single quarter. *See* RQO 08-03. Section 2-11.1(e)(5) requires that the identity of the gift giver, along with his or her address be included on the gift disclosure form.¹ *See also* C08-06 (reprimanding a Miami City Commissioner for violating the gift disclosure rules when she did not disclose the gift of free legal advice valued at \$46,000).

Here, the Legal Defense Fund you propose would not pay your current legal bills but would instead reimburse you directly for legal bills which you have already paid out of your own funds. For this

¹ The required form may be found here: https://ethics.miamidade.gov/library/forms/gift_form.pdf (last accessed on July 26, 2024).

reason, your proposed Legal Defense Fund is not permitted by the Ethics Code's broad prohibition on employees soliciting gifts.

Regarding your proposal to solicit donations so that you can raise awareness of what you describe as the County's unfair discipline practices, this too would be barred by the prohibition on employees soliciting gifts for themselves.

If you do, in fact, establish a non-profit in the future, you are urged to request a new opinion regarding any solicitation of donations for that non-profit.²

Opinion

Based on the facts presented here and discussed above, you are not permitted to establish a Legal Defense Fund to solicit donations to reimburse yourself for the money you personally spent on attorney's fees.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

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, <https://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 this is an informal opinion, 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.

² The Miami-Dade Ethics Commission has found that soliciting money using the GoFundMe platform is permissible, in certain situations. *See* INQ 20-135 and INQ 17-203 (both involving the solicitation of donations to the government entity on which the requestors, both elected officials, served). It should be noted that both of these opinions involved elected officials, who are expressly permitted to solicit donations to fund a public purpose of the government on which they serve.