

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #06-007

TO: Pedro G. Hernandez, City Manager
FROM: Jorge L. Fernandez, City Attorney (JLF)
DATE: October 3, 2006
RE: Use of City Hall

YOU HAVE REQUESTED A LEGAL OPINION AS TO WHETHER THE CITY MAY LAWFULLY LIMIT THE USE OF CITY HALL BY CITY SPONSORED ORGANIZATIONS AND NON-CITY SPONSORED ORGANIZATIONS TO PROHIBIT POLITICAL ACTIVITIES INCLUDING CAMPAIGN ACTIVITIES.

The City of Miami has an express policy that prohibits employees from using any City facilities, supplies, materials or other resources for political purposes. This includes a prohibition of the use of City telecommunications and/or technology systems for political activities. See APM 1-81, attached. You have indicated that you want this prohibition to include the use of City facilities and/or resources for political purposes by anyone, including members of City sponsored organizations and non-City sponsored organizations that are authorized to use City Hall. Therefore, you inquire as to the constitutionality of such a policy.

It is unquestionable that the speech component of the First Amendment includes various methods of communication, including a political speech or rally. Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 390, 89 S.Ct. 1794, 1806, 23 L.Ed.2d 371 (1969) (First Amendment confers "a right of the public to receive suitable access to social, political, esthetic, moral and other ideas and expressions."). However, the mere fact that certain category of speech is worthy of constitutional protection does not mean that it is equally permissible in all places and at all times. In fact, the Constitution does not require governmental entities to grant access to all who wish to exercise the right to free speech on every type of government property. The Supreme Court has stated that government has the same right as a private owner of property to preserve property under its control for the use to which it is lawfully dedicated. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46, 103 S.Ct. 948, 956, 74 L.Ed.2d 794 (1983).

Thus, the legal issue at hand is whether a City imposed ban on political activities by candidates for public office would be constitutional as applied to the use of City Hall by civic organizations. The Supreme Court has adopted a forum analysis as a means of determining when the government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. There are basically three types of forums: (1) the traditional public forum (e.g., the village green); (2) the limited or designated public forum (where the government has designated, sometimes just for a limited time, space open for limited expressive activity); and (3) the non-public forum (e.g., a courthouse lobby), which involves public property not aimed at free expression.

City Hall is primarily used by the elected and appointed officials of the City of Miami for the sole purpose of conducting official City business. Additionally, City Hall is used to hold City Commission and other official board meetings. The agendas that are subject to public discussion and debate at these meetings are controlled by the City and/or the members of the official boards. As such, City Hall is considered a non-public forum that has never been designated for indiscriminate expressive activity by the general public.

Also, it is noteworthy to point out that express City policy limits the use of City Hall during periods outside normal business hours to use by an official board or committee established by the City Commission for the purpose of conducting official City business. APM 4-82, attached. Additionally, said policy limits the use of City Hall by non-City sponsored organizations to only state agencies, federal agencies, and/or other municipalities. It is clear that the referenced express policy would not permit the use of City Hall for political activities, including political campaign activities.

In conclusion, City Hall which is not by tradition or designation a forum for indiscriminate public communication may be reserved by the City Manager for its intended purpose of conducting official City business.

JLF/JOB/dd
Enclosure(s)

POLICY NUMBER:

APM - 1 - 81

DATE:

ISSUED BY:

Linda Haskins
City Manager/Designee

SIGNATURE

CITY OF MIAMI



ADMINISTRATIVE POLICY

REVISED
SECTION
Created
Clean-Up
Revised

REVISIONS

DATE OF
REVISION
03/26/81
02/09/01
08/20/04

Page 1 of 2

SUBJECT: LIMITATIONS ON POLITICAL ACTIVITY

PURPOSE: To establish a Policy concerning political activity by City employees.

THE POLICY WILL BE AS FOLLOWS:

Employees may participate in political activity only outside of normal working hours.

Most political activity by City employees was previously prohibited whether on or off duty, by the Civil Service Rules. This prohibition was abolished in its entirety by Ordinance #8459 effective October 6, 1975. Thus, City employees may now exercise the normal rights of citizenship to participate in political activity. This does not extend to use of City time or materials for political purposes.

The following provisions apply:

- I. Employees may not participate in political activities or campaigning during normal working hours.
- II. Employees may not visit, aid or assist elected officials or candidates for elective office during regular working hours for political purposes.
- III. Employees may not use any City facilities, supplies, materials or other resources for political purposes. This includes a prohibition of the use of City telecommunications and/or technology systems for political activities.
- IV. Civil Service Rule 14.2 states the following as grounds for dismissal, suspension and demotion of any employee who:

"14.2 (j) Has solicited the vote of a member of the City Commission for or against a proposed ordinance or resolution or a proposed item in a budget, or an appropriation ordinance concerning the employee's department, where such solicitation is charged and established to have been made elsewhere than at a public hearing of the City Commission or a committee thereof unless the employee is an authorized representative and is presenting the opinion of an organization of City employees; or

14.2 (m) Has used, or threatened, or attempted to use political influence in securing promotion, leaves of absence, transfer, change in pay, change in character of work, or revision of examination grade.”

V. Sec. 54-7 of the City Charter and Code states:

“It shall be unlawful to place political advertisements, handbills or snipe signs or billboards on City-owned property and trash receptacles placed upon City streets and sidewalks.”

VI. Florida Statutes contain provisions that apply to City officials and employees who become candidates for elective office. Each case should be handled on an individual basis. Any employee who decides to become a candidate should consult his or her Department Director, who will seek appropriate legal guidance.

VII. All Department Directors are responsible for informing their employees and enforcing the provisions of this Administrative Policy.

This Administrative Policy applies to all Civil Service employees and to all other employees, whether classified or unclassified, under the jurisdiction of the City Manager.

POLICY NUMBER:

APM- 4 - 82

DATE:

October 5, 1982

ISSUED BY:

Howard V. Gary
City Manager

CITY OF MIAMI



ADMINISTRATIVE POLICY

REVISED
OF
SECTION
REVISION
Created
10/05/82

REVISIONS

DATE

SUBJECT:

USE OF CITY HALL

PURPOSE: To establish policy with respect to the utilization and security of City Hall during periods outside normal business hours.

THE POLICY WILL BE AS FOLLOWS:

Effective this date, this Administrative Policy supersedes all previous directives on this subject.

I GENERAL

In order to prevent unauthorized people from entering unattended offices and to minimize the potential of theft or damage to City property, offices should be locked when unattended. In addition, lights and other electrical equipment should be turned off when not in use.

II USE OF CITY HALL BY CITY SPONSORED ORGANIZATIONS

A City sponsored organization is an official board or committee established by the City Commission for the purpose of conducting official City business. These groups may schedule the use of City Hall by contacting the City Manager's Office. When the City Manager's designee has authorized the requested use, a representative of the group may obtain a key to City Hall from the Office of labor relations. The group's representative shall be required to sign a receipt for the key and an acknowledgment of responsibility for the security of the building and its contents during the time of the meeting. At the conclusion of the meeting, the group representative shall ensure that lights and equipment used in the conduct of business are turned off and the building is locked. The key shall be returned to the Office of Labor Relations on the next scheduled workday.

III USE OF CITY HALL BY NON-CITY SPONSORED ORGANIZATIONS

A A non-City sponsored organization is a group, which is not specifically constituted by the City Commission and/or does not exclusively exist for the purpose of conducting official City business. Non-city sponsored organizations permitted to use City Hall shall be limited to state agencies, federal agencies and/or other municipalities. Civic organizations not defined as above shall not be permitted the use of City Hall.

B Requests by these authorized groups to use City Hall for purposes of meeting shall be referred to the City Manager's Office for approval and scheduling. As a condition of approval, the group's representative must arrange and pay for the services of an off-duty City of Miami Police Officer. The Police Officer shall be on site for the duration of the meeting and shall be responsible for ensuring the security of the building and its equipment. To obtain the services of the Police Officer, the group's representative should contact the Off-Duty Employment Office of the Miami Police Department. (Phone: 579-6440)