

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #06-009**

TO: Honorable Michelle Spence-Jones, Commissioner
District 5
FROM: Jorge L. Fernandez, City Attorney
DATE: November 30, 2006
RE: Ethics Inquiry re: Solicitation of Sponsor for Events
Matter ID No.: 06-2358

YOU HAVE REQUESTED A LEGAL OPINION AS TO WHETHER A PROHIBITED CONFLICT OF INTEREST WOULD BE CREATED WERE YOU, A CITY COMMISSIONER, TO SOLICIT OR ACCEPT FINANCIAL CONTRIBUTIONS TO ASSIST IN SPONSORING AN EVENT FOR AN ARTIST AT AN ART GALLERY LOCATED IN A BUSINESS OWNED BY MEMBERS OF YOUR FAMILY?

ADDITIONALLY, YOU ASKED IF A VIOLATION OF ETHICS LAW WOULD OCCUR IF YOU WERE TO DIRECT THE PROCEEDS FROM THE SALE OF THE ART TO GO TO AN ORGANIZATION THAT PROVIDES ASSISTANCE TO HOMELESS WOMEN?

In your request for a legal opinion you advise that your family runs an art gallery that is located in the District that you represent as a City Commissioner. You also state that neither you nor your husband owns an interest in the business. You indicate that you wish to host an event with an artist at said art gallery. In order to defray the costs of such event, you intend to solicit sponsors. You indicate that none of the sponsors have any business before the City Commission. Additionally, you would like the proceeds from the sale of the art work to go to Lotus House which provides assistance to women who are homeless. Thus, it is assumed that the proceeds would be directed to a charitable organization.

There is no provision of the Code of Ethics for Public Officers and Employees which prohibits altogether a public officer from soliciting or accepting any financial gifts, including contributions to sponsor an event such as the one you describe. So long as the solicitation or acceptance of financial contributions from the sponsors is not based upon any understanding that official action would be influenced, and so long as the official does not know, and with the exercise of reasonable care should not know, that it is being given to influence some official action in which the public officer is expected to participate, neither Sections 112.313(2) nor 112.313(4), Florida Statutes, nor City of Miami Code Section 2-613, would prohibit a City

Commissioner from soliciting or accepting such financial contributions.^{1/}

Please note that the law places the burden upon a public officer to exercise reasonable care in determining whether a particular payment or thing of value has been given with the intent to influence his or her official action. Assuming the donor is in a position to be benefited by the officer's action, the officer should weigh the value of the thing received against the ostensible purpose for its having been given. The larger its value, the more difficult it should be to justify its having been given for any reason except to influence, assuming that there is some official action on the part of the recipient anticipated in the future which would affect the donor or some other specific person or entity related to the donor.

In conclusion, so long as your solicitation or acceptance of contributions from sponsors to host the art event is not based upon any understanding that your official action would be influenced, and so long as you do not know, and with the exercise of reasonable care should not know, that it is being given to influence some official action in which you are expected to participate, it is my opinion that the Code of Ethics would not prohibit you from soliciting or accepting contributions from sponsors and directing the proceeds from the sale of the art to the Lotus House.

JLF/JOB/dd

^{1/} SOLICITATION OR ACCEPTANCE OF GIFTS. -- No public officer or employee of an agency or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service that is based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby. [Section 112.313(2), Florida Statutes (2006)]

UNAUTHORIZED COMPENSATION.--No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity. [Section 112.313(4), Florida Statutes (2006)]

ACCEPTING GIFTS, ETC., FROM PERSONS CONTRACTING, ETC., WITH CITY. Every officer, official or employee of the city, including every member of any board, commission or agency of the city, is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the city. [Miami City Code Section 2-613]