



To: Commissioner Vince Lago

From: Miriam S. Ramos, Deputy City Attorney for the City of Coral Gables

MSR

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Newsletters Issued by Sitting Commissioners

Date: July 12, 2016

City Commissioner Vince Lago has asked the following questions regarding newsletters issued by sitting Commissioners. Before addressing each question specifically, I note the following from an opinion issued by the Miami-Dade Ethics Commission (MDCOE) (INQ 06-73),

“...there is no doubt in my mind that elected officials have a right, and possibly a duty, to inform their constituents about matters of public concern, whether they represent them in local, state or federal government. To the extent the Commissioner wants to explain to [his] constituents the efforts [he] has undertaken to represent them, the most effective method is to reach the residents through the U.S. mail. Therefore, using city stationery to accomplish this goal is perfectly acceptable. Furthermore, the rationale behind giving elected officials some discretionary funds is to promote the interests of her constituents and using these resources for keeping her constituents better informed regarding issues being discussed and decided at City Hall is an appropriate use of these discretionary funds.”

How can the publication of the newsletter be paid for?

A newsletter published by a City Commissioner that includes pertinent information about City programs, activities and issues, **serves a public benefit and can therefore be funded by the City.** The public benefits from learning about City happenings and also from knowing the general position of their elected officials¹ with regard to particular issues of general concern.²

Alternatively, **the newsletter may be paid for privately** (by the Commissioner personally or with funds raised by him for this purpose). In CEO 91-37 the Florida Ethics

¹ An elected official should not expressly advocate approval or rejection of a particular item going before the City Commission but may state what he personally favors or opposes. See INQ 12-143, MDCOE

² As long as the newsletter is devoid of language encouraging constituents to vote for him at the next election, the mailing of a newsletter, funding by the City/County is permissible. See INQ 02-42, MDCOE

Commission (FEC) opined that, “a city commissioner may solicit funds to pay for mailing newsletters to his constituents, where the newsletters contain information relating to city issues and *include a disclaimer that the opinions contained in the newsletter are those of the city [commissioner]*, and that no public funds were used to pay for the newsletter.”

This office refrains from opining on whether campaign funds may be used to publish the newsletter as this issue involves an election matter outside of the Commissioner’s official position. It is important to note, however, that a newsletter published using election funds is subject to a different analysis which likely would restrict the use of the City seal and would certainly not permit the use of any City resources in its production.

Can the City seal be used in the newsletter?

Yes, as long as the newsletter is published in the performance of the Commissioner’s official duties.

Sec. 165.043, F.S. which states, “...the manufacture, use, display, or other employment of any facsimile or reproduction of the county or municipal seal, *except by county or municipal officials or employees in the performance of their official duties*, without the express approval of the governing body is a second degree misdemeanor...” Similarly, Sec. 2-4(f) of the City Code permits the use by the City for “a. regular and consistent use in connection with city business...”

Therefore, if the newsletter is paid for by the City and informs the public of official City business, the City seal may be used. **If the newsletter is paid for with private funds, the City seal may also be used so long as the newsletter has a public purpose** and is issued by the Commissioner in the performance of his official duties. In CEO 91-38, the FEC opined that the use of the City seal, a Commissioner’s title, name, the name of the City and the address and phone number of City hall is permissible in a privately funded newsletter so long as a public purpose exists and the Councilmember does not do so corruptly, with the intent of securing a special privilege, benefit or exemption.

Can the title of “Commissioner” and/or the “From the desk of Commissioner Vince Lago” be used in the newsletter?

Yes, if the publication is City-funded and for a public purpose. As a general rule, however, an individual’s title belongs to him/her. In fact, the MDCOE has opined that an elected official may use his/her title to endorse a candidate or write a letter of recommendation³. In RQO 05-06, the MDCOE opined that “**the use of one’s official title in political stationery does not constitute ‘Exploitation of Official Position’ because it is used for identification purposes** and not an attempt to gain any special privilege.” However, the use of an elected official’s title for business purposes is prohibited⁴.

Therefore, the use of the Commissioner’s title or a statement like “From the desk of Commissioner Vince Lago” in a publication about City business whether paid for by the City or privately, would be permissible.

Can the Commissioner’s City email be included in the newsletter?

Yes, if the publication is City-funded and for a public purpose. If the publication is privately funded, it is also permitted, as the same analysis provided in CEO 91-38 applies to

³ See INQ 10-133, 12-175

⁴ See RQO 12-05 and INQ 13-105, 16-34

this question. In that opinion the FEC permitted the use of the City address and phone number in a privately funded newsletter with a public purposes. I see no distinction between the publication of the Commissioner's City address and phone number and the publication of the Commissioner's email address.

This opinion is issued pursuant to Sec. 2-201(e)(1) and (8) of the City of Coral Gables Code giving the City Attorney's Office the authority to issue opinions and interpretations on behalf of the City.

7/12/2016

From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Cc: [Leen, Craig](#)
Subject: FW: Opinion re. newsletter
Date: Tuesday, July 12, 2016 10:55:56 AM
Attachments: [opinion re newsletter.pdf](#)
[image001.png](#)

Enga, please publish.

Thanks,

Miriam S. Ramos, Esq.

Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial



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From: Ramos, Miriam
Sent: Tuesday, July 12, 2016 10:55 AM
To: Lago, Vince
Cc: Leen, Craig
Subject: Opinion re. newsletter

Dear Commissioner,

It was a pleasure meeting with you this morning. Please find the opinion

you requested regarding newsletters attached.

Sincerely,

Miriam S. Ramos, Esq.

Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial



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CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING NEWSLETTERS ISSUED BY SITTING COMMISSIONERS

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Alternatively, **the newsletter may be paid for privately** (by the Commissioner personally or with funds raised by him for this purpose). In CEO 91-37 the Florida Ethics Commission (FEC) opined that, “a city commissioner may solicit funds to pay for mailing newsletters to his constituents, where the newsletters contain information relating to city issues and *include a disclaimer that the opinions contained in the newsletter are those of the city [commissioner]*, and that no public funds were used to pay for the newsletter.”

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