



OFFICE OF THE CITY ATTORNEY

May 4, 2017

Dear Dr. Medina,

The City Clerk, as the Supervisor of Elections for the City of North Miami, has referred your complaint to me for a legal opinion. Based upon my review of your allegations, I find no violation of any relevant election laws or City ordinances.

You have alleged that the Mayor's Community Food Distribution which is scheduled for Friday, May 5, 2017, in conjunction with the Farmshare and Share Your Heart organizations (the "Event") is an "inappropriate use of city resources for electoral purposes."

The use of public resources for campaign purposes is prohibited by Fla. Stat. 112.313 (6) which states:

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term "corruptly" is defined by Fla. Stat. Section 112.313(9) which states:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resorting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

In order to conclude that a public servant violated Section 112.313(6) the following elements must be established:

1. The alleged violator must have been a public officer or employee of an agency.
2. The alleged violator must have used or attempted to use his official position or any other property or resources within his trust or perform his official duties to secure a special privilege, benefit or exemption for himself or others.
3. The alleged violator must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting himself or another person from some acts or omissions which are inconsistent with the proper performance of his public duties.


See In Re: Robin Holman, 1999 WL 1486407 (Fla. Div. Admin. Hrgs.) Here, while the Mayor is in public office, I believe that the other two elements have not been met.

Based upon my review of the facts, the Event is not a campaign event and has not been advertised as such. Therefore, City resources can be used to support the Event. As you know, the Event was held last year in May as part of Haitian Heritage month. Last year's event was advertised in the exact same manner as it is being advertised this year. In fact, the flyers from May 2016 are almost exactly the same as the flyers used in May 2017 and contain most of the same graphics and information. Moreover, none of the advertisements for the Event mention the upcoming election nor do they characterize the Mayor "as the great benefactor" or the "champion of the needy" as stated in your complaint. This language also does not appear on the City's website or Facebook page.

The gravamen of your complaint is that Mayor Smith, while performing his official duties as Mayor, has an advantage over you and is deriving incidental benefits to his campaign. This is always the case when a candidate is also an incumbent. In other, similar, situations, Courts have recognized that while these incidental benefits may exist, "incidental benefits" to the incumbent as a candidate is not enough to prove an ethical violation. *See Blackburn v. State*, 589 so.2d 431 (1st DCA 1991).

In this case, the Event is a regularly scheduled activity that is part of the Mayor's official duties. So long as the Event is a valid City event, there is no basis to surmise that the Mayor's or the City's actions are illegal or unethical. If you disagree with this opinion you are free to file a complaint with the proper authorities.

Regards,


Jeff P. H. Cazeau
City Attorney