

On Jul 12, 2021, at 10:29 AM, Hans Ottinot <hans@ottinotlawpa.com> wrote:

Dear Mayor:

Good morning. I hope all is well today. Before discussing the issue you raised in your email below, please accept my apology for not responding to your email earlier.

Regarding your continuing objection to the Publix Gift Card issuance to residents, please be advised that the decision to provide Publix Gift Cards to residents who were impacted by Covid-19 is a policy decision made by the City Commission pursuant to an adopted Resolution, which clearly established the public purpose of the program. The aforementioned Resolution was approved for form and legal sufficiency by me. After a robust policy debate regarding the Gift Card Program, you voted “No” against the Resolution.

Background

Subsequent to the adoption of the Resolution and the issuance of the gift cards based on the directives issued to the City Manager, in your capacity as Mayor, you issued an email legal opinion to me asserting that the Gift Card program was in violation of Florida law because there was no public purpose. You even provided me with an antiquated case from the Florida Supreme Court to review in support of your legal opinion. In response, via a legal memorandum, I respectfully disagreed with your legal opinion and advised you that the Gift Card program was consistent with Florida law. By email dated June 21, 2021, you issued another legal opinion advising me that you disagreed with my legal opinion for a number of reasons, which included but are limited to the manner in which the City Manager implemented the gift card program from a policy perspective. Moreover, you claimed that the case law that I cited was not on point because the facts were not identical with the matter at hand even though the antiquated case you provided me was factually different than the matter at hand. Undeterred by the policy decision of the City Commission, you “directed” me to seek an opinion from the Florida Attorney General’s Office.

Request for Legal Opinion from Attorney General’s Office

Please be advised that the Gift Card Program was a policy decision made by the City Commission consistent with Florida law. The City Commission has the authority to direct me to obtain a legal opinion from the Attorney General’s Office in this matter. If you have a disagreement with this policy decision, I would encourage you to discuss your disagreement with the City Commission at a public meeting to see how you can improve the program if you believe there are deficiencies. Even if the City Commission had directed me to request a legal opinion from the Attorney General’s Office, it is important to note that the legal opinion of the Attorney General’s office is advisory and not binding on local governments. More importantly, the Attorney General’s Office, as a matter of policy, will not issue legal opinions which **“sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency’s own legal counsel.” (emphasis added)** Clearly, a legal opinion from the Attorney General is not appropriate here even if the request was made by the City Commission.

As a former Assistant Attorney General of the State of Florida, I take the policies of the Attorney General’s Office seriously and I intend to follow the policies relating to requesting legal opinions. As such, I do not intend to request any opinion from the Attorney General’s Office regarding this matter as requested. I stand by my legal opinion issued in this matter. Again, I urge you to work on convincing your colleagues on the City Commission that in the market place of ideas that you may have ideas to improve the Gift Card Program if the Program is reinstated in the future.

I trust my email is responsive. I have attached the policies of the Attorney General’s Office relating to the issuance of legal opinions.

Regards,

Hans