



City of North Miami Beach Interoffice Memorandum

City Attorney's Office

TO: Mayor Anthony DeFillipo

FROM: Hans Ottinot, Interim City Attorney

CC: Mayor and City Commission
Arthur H. Sorey, III, City Manager
Pamala H. Ryan, Esq.
Regine Monestime, Esq.

DATE: June 16, 2021

RE: **City Commission's Decision to authorize the City Manager to provide Publix Gift Cards to Residents impacted by the Pandemic**

Issue

You have requested a legal opinion from the Office of the City Attorney to determine whether the City Commission's decision to authorize the City Manager to spend public funds to provide \$100 Publix Gift Cards to residents, who suffered financial hardship and food insecurity during the Covid-19 pandemic, was for public purpose and permissible under Florida law.

Based on your email attached hereto, you indicated that "it is your contention that the Publix \$100 Gift Card giveaway, which benefited only 1,000 residents out of the nearly 44,000 residents of North Miami Beach, constitutes the expenditure of public money for a private purpose, and thus, was an unlawful expenditure of our residents' tax dollars." As more specifically stated below, the City Commission's decision to authorize the City Manager to spend public funds to provide Publix Gift Cards to residents impacted by the pandemic was for a public purpose and permissible under Florida law.

Short Answer

Under Florida law, the City Commission's decision to authorize the City Manager to spend public funds to provide \$100 Publix Gift Cards to residents, who suffered from financial hardship and food insecurity during the Covid-19 pandemic, was for a public purpose and permissible under Florida law. It is important to note that numerous municipalities have used public funds to provide Publix Gift Cards or other financial assistance, including rent assistance, to residents impacted by the pandemic. Thus, the City Commission's

decision is consistent with the law and precedents established by other municipalities in using public funds to assist residents impacted by the pandemic.

Analysis

Under Florida law, the public purpose test for any expenditure of public funds by a governmental entity is **whether the expenditure is for a purpose that primarily benefits the public, with any benefits to private interests being only incidental and secondary**. *O's Neil v. Burns*, 198 So. 2d 1 (Fla. 1967) (emphasis added) Moreover, to invalidate a legislative finding of public purpose, "the party challenging the [finding] must show that the stated purpose is arbitrary and capricious. The determination by the legislature of a public purpose, while not conclusive, is presumed valid and should be upheld unless it is arbitrary or unfounded – unless it is so clearly erroneous as to be beyond the power of the legislature." *Department of Transp. v. Fortune Federal Sav. & Loan Assn.*, 532 So. 2d 1267 (Fla. 1998). It is well-settled law that Florida courts will defer to the legislative body's determination of public purpose. *Burton v. Dade County*, 166 So. 2d 445, 447 (Fla. 1964) (Florida Supreme Court stating that "the wisdom or advisability of making [an] expenditure [of county funds] in any particular instance, is the responsibility of the governing authorities of the county.") The need to defer to the legislative body with respect to the definition of public purpose is generally approved by the courts because the "meaning of public purpose has become elusive. The problems with capturing its meaning are not unique to Florida." Martin M. Randall, "*The Different Faces of Public Purpose: Shouldn't It Always Mean the Same Thing?*" 30 Fla. St. U.L. Rev. 529 (2003). Therefore, "the determination as to whether such an expenditure serves a public purpose, i.e., a municipal purpose, is one that the governing body of the municipality must make." AGO 98-81 (1998). More importantly, the courts will not overturn this decision unless it is arbitrary and capricious. See, *Department of Transp.*, 523 So. 2d 1267 (Fla. 1998).

In applying the aforementioned test, the Florida Attorney General has opined on numerous occasions that public funds can be used to support programs benefiting residents even though the programs were operated by private non-profit organizations. See, AGO 72-198 (1972) (opining that it was appropriate to expend municipal funds to contribute to a private non-profit organization that rehabilitates drug addicts because the rehabilitation of such addicts served a public purpose); AGO 71-150 (1971) (opining that contributions to the Red Cross blood bank from county funds authorized when such contributions are made on an item-by item basis after each claim has been audited and approved by the county commissioners and clerk); AGO 83-6 (1983) (opining that municipality may contribute directly, or indirectly through the purchase of equipment, to a nonprofit, quasi-public corporation's football program if such a program is open to the public and satisfies a need for a public recreation program). To put it in perspective, if the Florida Attorney General deemed that public funds spent to support the rehabilitation of drug addicts satisfied the public purpose test, the City Commission's directive to the City Manager to spend public funds to provide \$100 Publix Gift Cards to residents, who suffered from economic hardship and food insecurity, would easily satisfy the public purpose test.

In the instant case, the facts clearly support a finding of public purpose for the decision of the City Commission to authorize the delivery of the \$100 Publix Gift Cards to residents

who have been impacted by the pandemic. First, the City Commission clearly stated in its resolution that the purpose of the gift card program was to provide financial assistance to residents who have suffered “financial hardship and food insecurity” during the pandemic. Second, the City Commission directed the City Manager to create a program to ensure that gift cards were provided only to City residents. Lastly, based on the instructions provided to the City Manager, the City Manager created a delivery program to ensure that the gift cards were provided for public benefit, especially the benefit of residents living in the City.

Regarding your contention that the City Commission’s decision to provide residents with the \$100 Publix Gift Cards is not consistent with Florida law, you cited and provided me a copy of the Florida Supreme Court’s case of *State et.al. v. Town of North Miami*, 59 So. 2d 779 (Fla. 1952). As stated previously, the law has evolved as to the definition of public purpose since the 1952 decision. In fact, the Florida Supreme Court later opined that the test to determine whether an expenditure satisfied public purpose is **whether the expenditure is for a purpose that primarily benefits the public, with any benefits to private interests being only incidental and secondary**. *O’s Neil v. Burns*, 198 So. 2d 1 (Fla. 1967) (emphasis added). Moreover, the Town of North Miami case is not applicable to the instant matter because it involved the town seeking public financing to construct a building for a private party with a generalized public benefit.

Here, the City Commission merely authorized the City Manager to provide direct financial assistance to residents who were impacted by the pandemic. There was no benefit to any private interest except incidental benefits to Publix. The limited scope of the assistance does not diminish the public purpose under the law. Indeed, the City Commission has the discretion to provide further assistance in the future if the need arises. The facts as known from speaking with the City Manager demonstrated that the gift cards primarily benefitted the public-residents of the City of North Miami Beach.

I trust this memorandum addresses the question asked. For your convenience, I am providing you with a copy of the resolution relating to the gift cards. Please let me know if you have any further questions or concerns.

Attachment

From: Defillipo, Anthony
Sent: Monday, June 14, 2021 12:42 PM
To: Ottinot, Hans <Hans.Ottinot@citynmb.com>
Cc: Sorey, Arthur <Arthur.Sorey@citynmb.com>; Jose Arrojo <jose.arrojo@miamidade.gov>
Subject: legal opinion letter needed

Hans,

This is my request for a written legal opinion from your firm, as City Attorney, regarding the recent Publix \$100 Gift Card giveaway.

Article VII, Finance and Taxation, Section 10, of The Florida Constitution specifically prohibits municipalities from giving, lending or using its taxing power to "aid any corporation, association, partnership or person."

In addition, in 1952 the Supreme Court of Florida ruled in State v. Town of North Miami (attached hereto), against the taking of private property, i.e., ad valorem taxes, "except when it will serve a public purpose." Two key points of this ruling are:

1. Our organic law prohibits the expenditure of public money for a private purpose. It does not matter whether the money is derived by ad valorem taxes, by gift, or otherwise. It is public money and under our organic law public money cannot be appropriated for a private purpose or used for the purpose of acquiring property for the benefit of a private concern. It does not matter that such undertakings may be called or how worthwhile they may appear to be at the passing moment.
2. [A municipal legislature] cannot authorize a municipality to spend public money or lend or donate, directly or indirectly, public property for a purpose which is not public.

Accordingly, it is my contention that the Publix \$100 Gift Card giveaway, which benefited only 1,000 residents out of the nearly 44,000 residents of North Miami Beach, constitutes the expenditure of public money for a private purpose, and thus, was an unlawful expenditure of our residents' tax dollars.

Therefore, please provide me with your written legal opinion by no later than Thursday, June 17, 2021 at 5:00 PM.

Very truly yours,

Mayor Anthony DeFillipo

cc: Arthur H. Sorey III
Jose Arrojo, Esq.

PLEASE NOTE: The City of North Miami Beach is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as public record.

PLEASE NOTE: The City of North Miami Beach is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as public record.

You're receiving this message because you're a member of the City Attorney Office group from citynmb. To take part in this conversation, reply all to this message.

[View group files](#) | [Leave group](#) | [Learn more about Microsoft 365 Groups](#)

PLEASE NOTE: The City of North Miami Beach is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as public record.

RESOLUTION NO. R2021-40

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ALLOCATE \$100,000.00 FOR THE PURCHASE OF 1000 PUBLIX GIFT CARDS VALUED AT \$100.00 EACH TO BE ISSUED TO RESIDENTS OF NORTH MIAMI BEACH WHO HAVE EXPERIENCED FINANCIAL HARDSHIP AND FOOD INSECURITY AS A RESULT OF THE COVID-19 PANDEMIC; PROVIDING THE CITY MANAGER OR DESIGNEE WITH THE AUTHORITY TO DEVELOP A PROCESS TO REQUEST PROOF OF RESIDENCY BEFORE THE ISSUANCE OF A GIFT CARD TO ANY RESIDENT AND TO ENSURE THE ISSUANCE OF ONE GIFT CARD PER HOUSEHOLD; DIRECTING THE CITY MANAGER OR DESIGNEE TO DISTRIBUTE THE GIFT CARDS NO LATER THAN THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, COVID-19 pandemic has caused many residents in the City of North Miami Beach to experience financial hardships and food insecurity; and

WHEREAS, numerous municipalities, including the City of Miami, City of Miami Beach, City of North Miami, and City of West Miami, have launched a grocery card assistance program in collaboration with Public Supermarkets to help residents in their respective cities who have experienced financial hardship and food insecurity as of the result of the COVID-19 pandemic and the associated economic downturn; and

WHEREAS, the City Commission of the of North Miami Beach wishes to provide \$100 Publix Gift Cards to residents, who are experiencing financial hardship and food insecurity as result of COVID-19; and

WHEREAS, the City Commission is authorizing the City Manager to allocate \$100,000.00 for the purchase of 1000 Publix Gift Cards valued at \$100.00 each to be issued to residents who have experienced financial hardship and food insecurity due to COVID-19 pandemic; and

WHEREAS, the City Manager is authorized to develop a process to ensure that the \$100.00 Publix Gift Cards are issued to residents who are able to provide valid identification or other acceptable identification and a recent utilities bill to prove residency in the City of North Miami Beach; and

WHEREAS, the City Commission has directed the City Manager to distribute the Publix Gift Cards no later than thirty (30) days from the effective date of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Commission of the City of North Miami Beach, Florida:

Section 1. That the recitals and finding contained in the forgoing "whereas" clauses are adopted by reference and incorporated as if fully set forth in this section.

Section 2. The Mayor and City Commission hereby authorize the City Manager or designee to allocate \$100,000.00 for the purchase of 1000 Publix Gift Cards valued at \$100.00 each to be issued to residents of North Miami Beach who have experienced financial hardship and food insecurity as a result of the COVID-19 pandemic.

Section 3. The City Manager or designee is authorized to develop a process to request proof of residency (identification and recent utility bill), before the issuance of a gift card to any resident and to ensure the issuance of only one (1) gift card per household. The gift cards shall be distributed on a first come, first serve basis.

Section 4. The City Manager or designee is directed to distribute the Publix Gift Cards to residents no later than thirty (30) days from the effective date of this Resolution.

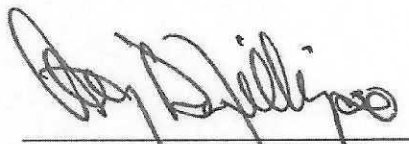
Section 5. This Resolution shall take effect immediately upon approval and adoption.

APPROVED AND ADOPTED by the City of North Miami Beach City Commission at the regular meeting assembled this 20th day of April 2021.

ATTEST:



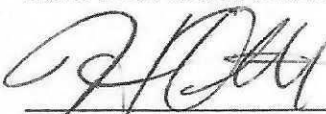
ANDRISE BERNARD, CMC
CITY CLERK



ANTHONY F. DENILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION



HANS OTTINOT
INTERIM CITY ATTORNEY

Sponsored By: Vice Mayor Paule Villard