

Weiss Serota Helfman
Cole & Bierman, P.L.

Memo

To: Daniel J. Stermer, Mayor, City of Weston

From: Robert A. Meyers, Esq.
Office of the City Attorney

Date: July 18, 2016

Re: Ability of Elected Official to Chair Political Committee (Moving Broward Forward)
CAO : 16-W7 (Outside Activities)

cc: City Commission
City Manager

You have advised that you are the current chairman of Moving Forward Broward, a political committee organized in July 2016 to advocate for the passage of transportation and infrastructure sales surtaxes referenda scheduled for the November 8, 2016 general election (the “Committee”). You have asked whether the Broward County Ethics Ordinance and state law permit you to serve as chairman and conduct fundraising activities for Moving Broward Forward in light of your capacity as Mayor of the City of Weston. Further, if permissible for you to serve as chair and conduct fundraising activities on behalf of the Committee, you have asked whether you would have any reporting requirements under state or local law in connection with fundraising activities for the Committee.

Section 1-19 of the Broward County Code establishes a code of ethics for local elected officials in Broward County (the “County Ethics Code”). In our review of the County Ethics Code, there are two provisions that could theoretically have some application to your role as chairman of a political committee. Section 1-19(c)(2) set forth the standards under which local elected officials may engage in outside or concurrent employment and also imposes a reporting obligation on those officials who have received remuneration from outside or concurrent employment activities. Consistent with prior safe harbor opinions issued by our office and the amendments to the local ethics ordinance adopted the Broward County Commission in December 2015, an elected official who receives no remuneration for services rendered has not engaged in outside employment. It is our understanding that you will not be compensated for your duties as the

Daniel J. Stermer, Mayor

July 18, 2016

Page 2

chairman of the Committee. Consequently, your role as Chairman for the Committee does not constitute outside employment and do not have to be reported under the County Ethics Code.

The County Ethics Code also contains a provision related to fundraising activities – one for charitable fundraising and another for campaign fundraising. Section 1-19(c)(5)(a) only applies to solicitations associated with nonprofit charitable organizations and 1-19(c)(5)(b) only applies to campaign fundraising for other candidates for office. In the instant case, you will not be soliciting contributions for a charitable organization nor for other political candidates. Therefore, you are not bound by the reporting requirements spelled out in this section of the County Ethics Code.

In addition to reviewing your actions under the County Ethics Code, we have examined state law to determine whether any restrictions or prohibitions exist with respect to your role as chairman and fundraiser for the Committee. Section 112.313, Part III of the Florida Statutes enumerates a standard of conduct for Florida's public officials. There are relatively few opinions from the Florida Commission on Ethics that have addressed elected officials who participate in political committees focused on issues. In CEO 80-82, the Florida Commission on Ethics found that no prohibited conflict of interest would be created were a city council member to serve as chairman of a local political committee of continuous existence. The Florida Ethics Commission considered whether the elected official who chaired the political committee held an employment or contractual relationship with an entity subject to the regulation of, or doing business with, the official's agency. The Commission concluded that the political committee was not subject to the regulation of the city council. Rather, political committees and committees of continuous existence are regulated by the Division of Elections of the Department of State. Moreover, the committee in this opinion was not doing business with the city council. Finally, the Ethics Commission found that service as chairman of this committee would not create a frequently recurring conflict with the performance of the duties of a city council member and would not impede the full and faithful discharge of those duties.

Based on CEO 80-82, we believe that no inherent conflicts exists under state law that would preclude you from acting as chairman of the Committee because the Committee is not regulated by, or doing business with, the City of Weston.

Another issue raised in your request for an opinion, and not addressed in any state ethics opinion, is the extent to which you would be allowed under state law to partake in fundraising activities for the Committee. You have stated in your request for an opinion that funds raised by your efforts will be used exclusively by the Committee for advocacy purposes and will not be commingled with public funds that local governments may decide to expend to provide factual information to the voters concerning the sales surtax ballot questions. It should be noted that the City of Weston Commission approved a resolution at its June 23, 2016 Special City Commission meeting to support the placement of the two sales surtax questions on the November 8, 2016 General Election Ballot.

Daniel J. Stermer, Mayor

July 18, 2016

Page 3

As part of your fundraising endeavors, you advised that you plan on reaching out to many individuals, groups and organizations in the community, which may include local governments and businesses, seeking contributions to the Committee. Under Section 106.113, Florida Statutes, local governments are prohibited from making donations to the Committee with public funds because these funds would be used by the Committee for advocacy purposes. However, you may solicit individual elected officials, who in their personal capacities are not bound by the same restrictions and can lawfully contribute to the Committee. As chairman you may request financial support from the business community as long as companies and firms doing business with the City of Weston understand that they are under no obligation to contribute and will not receive special treatment by the City of Weston should they decide to contribute to the Committee.

We emphasize the importance of keeping your fundraising activities on behalf of the Committee separate from your duties as Mayor. Practically speaking, this means you are not permitted to use city resources or city staff to assist in these fundraising activities and you must not solicit contributions in City Hall or in any City owned building. We are of the opinion that you may use your official title when you are acting as chairman of the Committee.

Although the City of Weston may not contribute to the Committee and you may not utilize city resources to advance the interests of the Committee, the City can spend public funds to provide factual information concerning these issues. Irrespective of your role as Chair of the Committee, we believe that the authority vested in you as Mayor gives you right to participate in any discussions held by the City Commission to consider whether the City wishes to spend public funds on forms of communications regarding these surtax ballot questions.

This Opinion is provided pursuant to Subsection 8 of the County Ethics Code, which allows an Elected Official to request an advisory opinion about how the Code applies to his or her own situation. Requests for opinions shall state all material facts necessary for the advising attorney to understand the circumstances and render a complete and correct opinion.” In addition, “until amended or revoked, an advisory opinion rendered pursuant to this section shall be binding on the conduct of the Elected Official covered by the opinion unless material facts were omitted or misstated in the request for advisory opinion. If the Elected Official acts in accordance with a binding advisory opinion, the Elected Official’s conduct may not be found to be in violation of the Broward County Elected Official Code of Ethics. However, any opinion rendered under this section shall not be binding as to whether the Elected Official’s action complies with state or federal ethics requirements.”

Assuming that you have disclosed all pertinent facts to us, you may use this opinion as a “safe harbor” under the Broward County Ethics Ordinance should any questions arise concerning the Opinion provided herein.

If you need any additional guidance regarding this matter, please contact us.

Daniel J. Stermer, Mayor
July 18, 2016
Page 4

Robert Meyers
Office of the City Attorney