

MEMORANDUM

TO: Mayor Mark D. Bogen
Vice-Mayor Dale V.C. Holness
Senator Nan H. Rich
Commissioner Michael Udine
Commissioner Lamar P. Fisher
Senator Steve Geller
Commissioner Beam Furr
Commissioner Tim Ryan
Commissioner Barbara Sharief

FROM: Rocio Blanco Garcia, Assistant County Attorney

DATE: April 17, 2019

RE: **Fundraising for the Benefit of Constituents and Residents Affected by Fires, Hurricanes, and Other Catastrophic Events**
CAO File: 19-03(E)

Item 53 on the April 16, 2019, County Commission meeting agenda approved the use of County Commission staff and in-kind resources (such as the telephone and e-mail systems, but nothing requiring an affirmative expenditure of public funds) to solicit funds or other aid to assist families who have experienced catastrophic loss. The item was placed on the agenda by Mayor Bogen, and initially applied only to his (Commission District 2) staff. But the item was amended prior to approval to (i) cover staff in all nine (9) Commission districts, and (ii) to direct this Office to promptly prepare an amendment to the Code of Ethics for Elected Officials (Section 1-19, Broward County Code of Ordinances) (the "Ethics Code") to clarify the scope of the "Charitable Contribution Fundraising" provision, Section 1-19(c)(5)(a), Broward County Code of Ordinances.

As we stated during the April 16 meeting, item 53 was placed on the agenda in an abundance of caution to address the potential application of the Charitable Contribution Fundraising provision, which states in applicable part (bolding is added for emphasis):

- (5) *Solicitation and Receipt of Contributions.*
 - a. Charitable Contribution Fundraising.

1. The solicitation of funds by an Elected Official **for a nonprofit charitable organization**, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect benefit between the parties to the solicitation.
2. To promote the full and complete transparency of **any such solicitation**, an Elected Official shall disclose, on a form created by the Office of the County Attorney, the name of the charitable organization, the event for which the funds were solicited, and the name of any individual or entity that requested that the Elected Official engage in the charitable fundraising solicitation. The form shall be filed for public inspection within fifteen (15) days after the solicitation of funds by the Elected Official.
3. An Elected Official **may not use staff or other resources** of his or her governmental entity in the **solicitation of charitable contributions**.
4. The requirements and prohibitions of this subpart shall not apply to actions of an Elected Official in connection with **charities or fundraising events formally approved by the official's governmental entity**.

The primary substantive provision, shown in paragraph 1, clearly applies only to solicitation of funds for a **nonprofit charitable organization**, which is not what item 53 addressed. The transparency provision, shown in paragraph 2, also clearly applies only to solicitation of funds for a **nonprofit charitable organization**. We interpret paragraph 3, in context, as also being limited in application to solicitation for charitable organizations.

Paragraph 4 provides an alternate means to ensure sufficient transparency, which is to place an item on the agenda of a publicly noticed Commission meeting for the Commission to consider formal approval of actions in connection with **charities or fundraising events**. While we also construe the scope of Paragraph 4 as being limited to fundraising events for charitable organizations, because public in-kind resources would be expended, and to ensure public disclosure, we counsel, only in an abundance of caution, in favor of seeking formal Commission approval even where the fundraising is not for the benefit of charitable organizations.

Ethics Opinion 19-03(E)
April 17, 2019
Page 3

It is our opinion that nothing in the Ethics Code prohibits a Commissioner from directing his or her staff, including through the use of the County phone and e-mail systems, to directly assist residents in dire need, provided there is no quid pro quo (personal gain to any elected official or staff) and that the use of staff and in-kind resources serves a permissible public purpose. It is our opinion that the Ethics Code requires no Board approval or disclosure when Commissioners are not raising money for charitable organizations but rather are seeking to assist those endangered by events causing catastrophic loss.

Although this opinion provides general advice on deploying County staff and resources in soliciting assistance for residents in need, ethics advice is nuanced and heavily fact-based. Therefore, we ask that, whenever possible, you allow us to consider the specific facts in connection with intended fundraising action prior to engaging in that action.

Finally, pursuant to the Board's direction on April 16, we are drafting an amendment clarifying the scope of Section 1-19(c)(5)(a). We expect that the first required action (setting the public hearing) will be ready for the Board's consideration at the next Commission meeting on May 7.

Please contact the County Attorney or me (ext. 8640) if we may be of further assistance on this matter.

/s/ Rocio Blanco Garcia
Rocio Blanco Garcia
Assistant County Attorney

cc: Andrew J. Meyers, County Attorney