

Memo

To: Wayne M. Messam, Mayor, City of Miramar

From: Jamie A. Cole, City Attorney, City of Miramar

Date: April 13, 2016

Re: Ability of Elected Official's Spouse To Enroll in Program (ATT Business Acceleration Program)
CAO : 16-M1 (Business Relationships)

AT&T established a business growth acceleration program, which is a diversity initiative to help diverse-owned businesses by mentoring a select group of qualified business leaders toward improving their business operations. AT&T has invited your spouse as a business leader and principal of Messam Construction to participate in its 2016 program. You wish to know whether there are any restrictions contained in state or local ethics laws that could create a conflict of interest for you due to her participation in this program.

Due to the issues presented by your request for opinion, it is necessary to examine state and local ethics laws. The first question to address is whether your spouse's involvement in a leadership program in her capacity as a private business owner represents a gift to you under the law. According to Broward County Code of Ethics Section 1-19(c)(1)(b), the local ethics ordinance incorporates the state statutory definition of the term "gift." Pursuant to F.S. 112.312(12)(b)(1), a gift does not include "salary, benefits, services, fees, commission, gifts or other expenses associated primarily with the donee's private employment, business or service as an officer or director of a corporation or organization." In the instant case, you and your spouse own Messam Construction and AT&T is offering a service to Messam Construction, specifically to your spouse, to take part in a mentoring program as a minority business owner. Since the offered services are associated exclusively with your private business (Messam Construction), this benefit is excluded from the definition of a gift under state law. Therefore, you would be in compliance with state and local ethics laws should your spouse participate in this mentoring program. Based on the fact involvement in this program is not a gift, you have no reporting requirement under state or local law.

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AT&T transacts some business with City, primarily connected to piggybacking on a state of Florida contract for air cards and cellphones, and it is conceivable that AT&T could occasionally have items that come before the City Commission. Under the circumstances, we must consider whether you can take action in your official capacity on ATT&T matters due to the fact that AT&T selected your spouse to participate in its business acceleration program. A voting conflict exists under state law if an action taken by an elected official would inure to the special benefit of the official or the official's relative, business associate or employer. A special benefit has to be financial or economic in nature and must uniquely affect the official or a small class of individuals including the elected official. A special benefit that is deemed to be remote or speculative does not create a voting conflict under state law.

Based on the nature of the issues involving AT&T that could be presented to the City Commission in future, it appears that these items would be wholly unrelated to AT&T's independent decision to recognize your spouse as a candidate for this 2016 leadership program. Any benefit your spouse could realize from enrolling in this program will not be enhanced by future actions taken by the City Commission concerning AT&T. Therefore, no voting conflict of interest would be created for you in your official capacity should AT&T have business before the City Commission while your spouse participates in this leadership program. Accordingly, you would be allowed to participate in the discussions and vote on these items.

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 be considered only if in writing and signed by the Elected Official or by his or her office staff. 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.

Jamie A. Cole
City Attorney