

MEMORANDUM

TO: Commissioner Michael Udine

FROM: Rocio Blanco Garcia, Assistant County Attorney

DATE: June 6, 2017

RE: **Guest Column Authored by Commissioner Udine to Inform Citizens on Matters of Public Importance**
CAO File: 17-09E (Gifts)

Kings Point, a community within Tamarac, District 3, publishes a monthly community newspaper which, among other things, provides its residents with information regarding local events and matters of general interest. Kings Point has asked you to author a guest column discussing issues of public importance, including matters that have already come or will be coming before the Board of County Commissioners. The Sun Sentinel, the main daily newspaper in Broward County, might also be interested in your guest column. You will not be paid for your contributions to these newspapers.

A review of the County's databases reveals that Kings Point is not a County vendor but the Sun Sentinel is a County vendor. You have asked whether the opportunity to author these columns constitutes a gift, and, if so, whether you may accept same.

Under the State and County codes of ethics, there are two primary restrictions on the acceptance of gifts. The first is that no gift may be solicited or accepted if it may reasonably be perceived to have been given to encourage you to take any action in your official capacity. Section 112.313(4), Florida Statutes (2016). The second restriction caps the value of gifts that may be accepted from certain donors.

Florida Law:

Under Section 112.3148(4), Florida Statutes, absent any applicable exception, County Commissioners are "prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the [County] . . . or [from] a lobbyist who lobbies the [County Commission] or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100 . . .".

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County's Code:

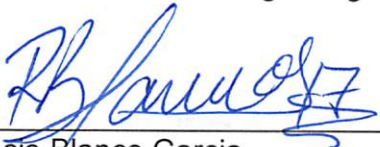
Under the County's Ethics Code, with certain exceptions not applicable here, Commissioners cannot accept any gift, directly or indirectly, from a lobbyist or vendor, which gift exceeds \$5. The term "gift" is defined the same under Florida Law and under § 1-19(b), of the Broward Cnty. Code of Ords.

The authoring of a column, free of compensation, by a County Commissioner does not fall squarely within any of the items that constitute a gift under Section 112.312(12)(a), Florida Statutes. However, free publicity to a Commissioner or other covered official has been deemed by the Florida Commission on Ethics to constitute a gift. See, e.g., CEO 12-16. Accordingly, this Office researched the Florida Commission on Ethics' opinions to determine whether the authoring of the columns would constitute publicity and thus a gift.

A review of the few opinions on the issue did not provide clarification on the matter, as all the available opinions dealt with the airing of public service announcements at airports, by television, by radio, or in movie theaters, or with the provision of free billboard space to a Commissioner. See, e.g., CEO 05-11 and CEO 08-29. In an effort to obtain clarification on the matter, this Office also spoke directly with one of the attorneys at the Florida Commission on Ethics, who specifically stated that the authoring of a column discussing issues of public importance, including matters affecting the state as a whole as well as issues that have come or are coming before the Board of County Commissioners, is a widespread practice which the Commission would not consider a gift. The Commission attorney further advised that, because the authoring of the column does not constitute a gift under state law (and, therefore, under the County code), there is no need to determine the value, if any, of the benefit provided to a Commissioner who is offered to author such column.

Therefore, based on the foregoing, it is this Office's opinion that you may authorize the columns at issue, irrespective of the value of such offer, because the columns, under the circumstances presented, do not constitute a gift to you. Because they are not a gift to you, the issue of whether the value exceeds \$100 (under state law) or \$5 (under the County's Code) need not be addressed.

Please contact Drew Meyers or me if we may be of further assistance regarding this matter.



Rocio Blanco Garcia
Assistant County Attorney

cc: Andrew J. Meyers, Chief Deputy County Attorney