

# Memorandum



**DATE:** April 11, 2005

**TO:** Department Directors

**FROM:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

**SUBJECT:** Political Activities of County Officers

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As you know, a citizen's petition drive regarding the structure of Miami-Dade County government has been approved by the Board of County Commissioners to move forward in the signature gathering process. If the requisite number of signatures is gathered, these issues will be placed on the ballot, as soon as November 2005.

Over the last several days questions related to the limitations on political activities of county officers and employees have been brought to my attention. The attached memorandum dated March 2002 from the County Attorney serves as a very clear guide. Please review and share with your staff.

Additionally, I have attached a copy of the International City/County Management Association (ICMA) guide to all professional public administrators. It is essential that we maintain our fairness and impartiality while this discussion of our governance structure occurs.

Thank you.

## Attachments

cc: Honorable Carlos Alvarez, Mayor  
Honorable Chairman, Joe A. Martinez  
and Members, Board of County Commissioners  
Assistant County Managers



# Memorandum

**To:** Steve Shiver  
County Manager

**From:** Robert A. Ginsburg  
County Attorney

**Date:** March 13, 2002

**Re:** Limitations on Political Activities of  
County Officers and Employees

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As another election season approaches, it is appropriate to remind County employees of their political rights and the limitations imposed by state law upon those rights. County employees are free to express their opinions on candidates and political issues, but must be careful to avoid using their official authority to improperly influence other voters.

The limitations on County officials and employees' political activities are set forth in § 104.31, Florida Statutes, which states:

- (1) No officer or employee of the . . . County . . . shall:
  - (a) Use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.
  - (b) Directly or indirectly coerce or attempt to coerce, command or advise any other officer or employee to pay, lend or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes. Nothing in this paragraph or any county or municipal charter or

ordinance shall prohibit an employee from suggesting to another employee in a non-coercive manner that he or she may voluntarily contribute to a fund which is administered by a party, committee, organization, agency, person, labor union or other employee organization for political purposes.

\* \* \*

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

\* \* \*

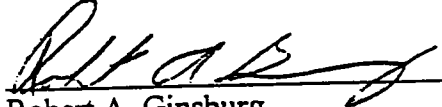
(3) Nothing contained in this section or in any county or municipal charter shall be deemed to prohibit any public employee from expressing his or her opinions on any candidate or issue, or from participating in any political campaign during the employee's off-duty hours, so long as such activities are not in conflict with the provisions of subsection 1 or § 110.233.

Read together, these subsections permit County employees and officials to voice their opinions about candidates and issues so long as they do not use their official authority in an attempt to influence the opinions of others. It is important to note that the statute preserves the right to engage in political activities off-duty, not on-duty. Political activities may not be conducted on-duty, consistent with the notion that taxpayers' monies are used to compensate County staff for the performance of their prescribed official duties, not to engage in political activity during office hours. *See County Attorney Opinion No. 79-23*. Of course, the prohibition against on-duty political activity should not be read so broadly as to prohibit even casual political discussions in the workplace. Voluntary, non-coercive speech of a political nature, like other non-work related discussions on matters of public concern, are protected by the First Amendment so long as the speech does not interfere with the proper functioning of the workplace and the efficient provision of public services.

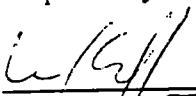
Whether on or off-duty, County employees must avoid using their official authority to influence the way other persons vote. County officers and employees may indicate how they personally intend to vote on a particular candidate or issue and may even state the reasons for their beliefs, but they may not urge, coerce or influence any other person's vote through the use of official authority. County employees are safe to discuss their own reasons for voting a certain way, but must be cautious to avoid telling or advising other persons how to vote while acting as an official or using their official authority.

The state statute also places specific restrictions on soliciting political contributions. While a County officer or employee may suggest to other employees, in a non-coercive manner, that they may voluntarily contribute to a political campaign, no employee or official can order or even advise another officer or employee to make such a contribution. County employees in their official capacity must also avoid commanding, suggesting or even hinting to members of the public that they should contribute to a campaign. Such conduct constitutes the use of official authority or influence for the purpose of affecting an election result, which is specifically prohibited by Fla. Stat. § 104.31(b), quoted above.

The limitations imposed by state law on political activities do not affect the duty of County employees to provide information to the public in connection with a political campaign. In providing such information, County employees must use their best efforts to respond truthfully and completely, in accordance with the Citizens' Bill of Rights provisions of the Dade County Charter.

  
Robert A. Ginsburg  
County Attorney

Prepared by:

  
Lee Kraftchick  
Assistant County Attorney

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# ICMA Code Of Ethics With Guidelines

**The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in July 2004.**

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

## *Guideline*

### **Advice to Officials of Other Local Governments.**

When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

## *Guidelines*

**Public Confidence.** Members should conduct themselves so as to maintain public confidence in their profession, their local government, and in their performance of the public trust.

**Impression of Influence.** Members should conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

**Appointment Commitment.** Members who accept an appointment to a position should not fail to report for that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time, but once a *bona fide* offer of a position has been accepted, that commitment should be honored. Oral acceptance of an employment offer is considered binding unless the employer makes fundamental changes in terms of employment.

**Credentials.** An application for employment or for ICMA's Voluntary Credentialing Program should be complete and accurate as to all pertinent details of education, experience, and personal history. Members should recognize that both omissions and inaccuracies must be avoided.

**Professional Respect.** Members seeking a management position should show professional respect for persons formerly holding the position or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity in order to be appointed to a position.

**Reporting Ethics Violations.** When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report the matter to ICMA. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis.

**Confidentiality.** Members should not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

**Seeking Employment.** Members should not seek employment for a position having an incumbent administrator who has not resigned or been officially informed that his or her services are to be terminated.

4. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

## *Guideline*

**Length of Service.** A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments

concerning conditions of employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

#### *Guideline*

**Conflicting Roles.** Members who serve multiple roles—working as both city attorney and city manager for the same community, for example—should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

#### *Guidelines*

**Elections of the Governing Body.** Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not engage in active participation in the election campaign on behalf of or in opposition to candidates for the governing body.

**Elections of Elected Executives.** Members should not engage in the election campaign of any candidate for mayor or elected county executive.

**Running for Office.** Members shall not run for elected office or become involved in political activities related to running for elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

**Elections.** Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically,

they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

**Elections in the Council-Manager Plan.** Members may assist in preparing and presenting materials that explain the council-manager form of government to the public prior to an election on the use of the plan. If assistance is required by another community, members may respond. All activities regarding ballot issues should be conducted within local regulations and in a professional manner.

**Presentation of Issues.** Members may assist the governing body in presenting issues involved in referenda such as bond issues, annexations, and similar matters.

8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

#### *Guidelines*

**Self-Assessment.** Each member should assess his or her professional skills and abilities on a periodic basis.

**Professional Development.** Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

#### *Guideline*

**Information Sharing.** The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

### *Guideline*

**Equal Opportunity.** All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

12. Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

### *Guidelines*

**Gifts.** Members should not directly or indirectly solicit any gift or accept or receive any gift—whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form—under the following circumstances: (1) it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or (2) the gift was intended to serve as a reward for any official action on their part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In *de minimus* situations, such as meal checks, some modest maximum dollar value should be determined by the member as a guideline. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

**Investments in Conflict with Official Duties.** Member should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

In the case of real estate, the potential use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that members' official actions and decisions can be influenced if there is a conflict with personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided (see the guideline on "Confidential Information").

Because personal investments may prejudice or may appear to influence official actions and decisions, members may, in concert with their governing body, provide for disclosure of such investments prior to accepting their position as local government

administrator or prior to any official action by the governing body that may affect such investments.

**Personal Relationships.** Member should disclose any personal relationship to the governing body in any instance where there could be the appearance of a conflict of interest. For example, if the manager's spouse works for a developer doing business with the local government, that fact should be disclosed.

**Confidential Information.** Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

**Private Employment.** Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

**Representation.** Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

**Endorsements.** Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, whether or not for compensation. Members may, however, agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.