

CITY OF CORAL GABLES

--MEMORANDUM--



The City Beautiful

TO: Mayor and Commissioners

FROM: Commissioner Vince Lago

A handwritten signature in black ink, appearing to be "V. Lago", is positioned to the right of the "FROM:" line.

DATE: October 25, 2018

SUBJECT: Miami-Dade Commission on Ethics & Public Trust Investigation Outcome

This memorandum serves to provide you with the outcome to a recent investigation by the Miami-Dade Commission on Ethics initiated by a memo sent by Miami-Dade Mayor Carlos Gimenez.

In response to this memo, the Commission on Ethics & Public Trust conducted an investigation and *concluded that the facts surrounding the complaint do not support any charges*, therefore no charges were made. In addition, the matter was reviewed by the State Attorney's Office and no public meetings and records violations were found.

All the Sunshine Meetings outlined in the complaint were publicly noticed and at no time did I violate the Sunshine Law.

CC: City Attorney, Miriam Ramos
City Manager, Peter Iglesias



**CLOSE OUT MEMO
PRELIMINARY INQUIRY**

Public Corruption Unit

A.S.A.: Nolen Andrew Bunker

INVESTIGATION #: 64-18-17

SIGNATURE: Nolen A. Bunker

DATE: October 12, 2018

REVIEWED BY: Tim Vandergiesen
TIM VANDERGIESEN, DC, Public Corruption Unit

DATE: 10-12-18

SUBJECT(S): Xavier Suarez
Vince Lago

EMPLOYMENT: Miami-Dade County Commissioner
Coral Gables City Commissioner

INVESTIGATOR: Susannah Nesmith
AGENCY: Miami-Dade Commission on Ethics
& Public Trust

PHONE:

ALLEGATION:

CRIME	STATUTE	DEGREE
Public Meetings and Records Violation	Fla. Stat. § 286.011	Misdemeanor, 2nd Degree

ANALYSIS & CONCLUSION:

On August 12, 2018, Miami-Dade County Commissioner Xavier L. Suarez (hereinafter, "Commissioner Suarez"), acting in his private capacity as an attorney, filed a civil Complaint for Declaratory and Injunctive Relief on behalf of three plaintiffs, including Coral Gables City Commissioner Vince Lago (hereinafter, "Commissioner Lago"). This civil Complaint named as defendants Miami-Dade County Mayor Carlos Gimenez (hereinafter, "Mayor Gimenez") and Miami-Dade County. It alleged that the named defendants used funds obtained from the People's Transportation Plan (hereinafter, "PTP") half-penny sales surtax to pay for general county transportation operating expenses in violation of the approved purpose of the ordinance authorizing the PTP half-penny sales surtax and in excess of their constitutional and statutory taxing authority. On August 14, 2018, the plaintiffs in the suit, including Commissioner Lago, filed a Stipulation for Substitution of Counsel, whereby Joseph J. Portuondo, Esq., took over as attorney of record on behalf of the plaintiffs, and Commissioner Suarez withdrew.

On August 22, 2018, Mayor Gimenez sent a memorandum to Joseph Centorino, Executive Director of the Miami-Dade Commission on Ethics & Public Trust (hereinafter, "COE"), which he copied to the Miami-Dade State Attorney,

among others. In his memorandum, Mayor Gimenez alleged that, by collaborating on the aforementioned civil complaint, Commissioners Suarez and Lago violated that portion of the Florida Statutes that is known as the Florida Sunshine Law because they are both voting members of the Miami-Dade Transportation Planning Organization (hereinafter, "TPO") Governing Board. The COE conducted an investigation, obtaining a copy of the civil Complaint, copies of the Stipulations for Substitution of Counsel in the civil case, a video recording of a July 18, 2018, meeting including Commissioners Suarez and Lago, an audio recording of an August 7, 2018, meeting including Commissioners Suarez and Lago, the "Sunshine" meeting notices for the July 18, 2018, and August 7, 2018, meetings, photographs from the July 18, 2018, meeting, a memorandum from the TPO concerning its regular meeting dates, and a number of tweets by Commissioners Suarez and Lago. Finally, the COE also conducted interviews with Commissioners Suarez and Lago, as well as with the other two plaintiffs from the civil Complaint: Deltravis Williams and Cindy Lerner. In the meeting with Commissioner Suarez, he stated that Mr. Shepard Nevel, an attorney, did most of the work to prepare the civil Complaint, including interviewing the plaintiffs, though he noted that there were times when he discussed the suit with Commissioner Lago. In the meeting with Commissioner Lago, he stated that he and Commissioner Suarez had multiple conversations concerning the suit, but advised that the issue in the civil Complaint would not come before the TPO in his opinion. Commissioner Lago emphasized that he would never have a private discussion with Commissioner Suarez concerning an item that would come before the TPO.

In addition to these documents, the above-signed Assistant State Attorney obtained a copy of the Interlocal Agreement authorizing the creation of the TPO, and additional tweets. Upon his request, the above-signed Assistant State Attorney also met with Commissioner Lago. Commissioner Lago reiterated his belief that the issue in the civil Complaint would not come before the TPO because the TPO is responsible for drafting plans, but does not have control over funding, including the use of the PTP half-penny sales surtax.

Based on the materials collected through this investigation, there is no evidence at this time to support a charge of Public Meetings and Records Violation. The entity that is responsible for oversight of the PTP half-penny sales surtax is the Miami-Dade Citizens Independent Transportation Trust (hereinafter, "CITT"). Miami-Dade County Code of Ordinances s.2-1421 established the CITT, and subsection (g) of that ordinance set forth its powers and responsibilities in relation to the use and expenditure of the proceeds from the PTP half-penny sales surtax.¹ The primary powers and responsibilities of the CITT, per the ordinance, are "to monitor, oversee, review, audit, and investigate [the] implementation of the transportation and transit projects listed in [the] levy of the surtax, and all other projects funded in whole or in part with surtax proceeds; [and, t]o assure compliance with any limitations imposed in the levy on the expenditure of surtax proceeds." In contrast, the TPO was established in 1977 by an Interlocal Agreement between the Florida Department of Transportation, the Miami-Dade Board of County Commissioners, and the Miami-Dade County School Board. The Interlocal Agreement granted the TPO the powers to carry on its "project," which was defined in the agreement as "the continuing, cooperative, and comprehensive transportation planning process for the Miami urbanized area, including the programming of transportation improvements for such area." The Interlocal Agreement otherwise provided the TPO with all of the powers, rights, privileges, immunities, and responsibilities as provided in s.339.175, Florida Statutes. Section 339.175, Florida Statutes, sets forth a number of responsibilities for the TPO, but primarily gives the TPO responsibility for annual and long-term transportation planning. Per the Interlocal Agreement, as amended, funding for the TPO comes from Federal and State sources, and from local sources "subject to approval and lawful appropriation of the respective member bodies." In light of these provisions, the narrow subject of the civil Complaint seems to fall within the CITT's responsibilities, and not the TPO's, because it concerns the lawfulness of the use of the PTP half-penny sales surtax funds to pay for general county transportation operating expenses. While the TPO has authority over transportation planning for Miami-Dade County, its planning and expenditure recommendations are subject to approval and appropriation from the aforementioned local sources. As such, discussions between Commissioners Suarez and Lago concerning the civil Complaint would not violate the Florida Sunshine Law.

Additionally, through the course of the investigation, two meetings that were attended by both Commissioners Suarez and Lago came under scrutiny. The first meeting, on July 18, 2018, was noticed on the same day that the meeting occurred. Nevertheless, a notice was issued, the meeting was attended by members of the public and the media, and the meeting was audio and video recorded, which the above-signed Assistant State Attorney has reviewed. Furthermore, after

¹ The ordinance creating the CITT does refer to the TPO, in that it provides that "the list of County projects contained in said Exhibit 1 [which is an exhibit attached to the ordinance] and the Five Year Implementation Plan may be changed as a result of the metropolitan planning organization process as mandated by federal and state law as applied to the Transportation Planning Organization ("TPO")." Miami-Dade County Code § 2-1421(g)(2)(c). Thus, while the ordinance creating the CITT does acknowledge that the list of projects on which the PTP half-penny sales surtax may be spent can be modified by the regular TPO planning process, the TPO's website, which can be found at <http://www.miamidadetpo.org/smartplan.asp>, likewise acknowledges that "the PTP is a locally funded initiative administered by the Citizens Independent Transportation Trust (CITT)."

Commissioner Suarez finished his opening remarks, he and Commissioner Lago were never again in the room together at the meeting and at no point did they engage in a conversation concerning any matter. The second meeting, on August 7, 2018, was noticed the day before the meeting and was audio recorded. The above-signed Assistant State Attorney reviewed the audio recording for this meeting as well. There is no evidence at this time that the occurrence of either meeting would support a charge of Public Meetings and Records Violation, particularly in light of the fact that both meetings were noticed, which evinces an intent on the part of the participants to comply with the Florida Sunshine Laws.

Finally, with regard to the various tweets that were issued by Commissioners Suarez and Lago, there is no evidence that either commissioner used or intended to use his tweets as a means to knowingly violate the statutory prohibition of unnoticed, non-public meetings between members of the TPO. Accordingly, the facts at this time do not support a charge of Public Meetings and Records Violation.

Accordingly, this matter is now closed.