



From: Bridgette Thornton Richard, Deputy City Attorney for the City of Coral Gables

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Scrivener's Error- Section 46-41 Of Municipal Code

Date: April 1, 2013

I reviewed Section 46-41 of the City of Coral Gables Municipal Code and I agree with your conclusion that it contains a scrivener's error with regard to its citation of Florida Statutes Section 212.08(7)(a). In relevant part, Section 46-41 provides as follows: "Solicitors or vendors making calls or soliciting orders on behalf of religious, charitable, scientific, educational, or veterans' institutions or organizations holding a sales tax exemption certificate under F.S. § 212.08(7)(a) are excluded from the operation of this section." City of Coral Gables Municipal Code Section 46-41 (emphasis added). However, Florida Statutes Section 212.08(7)(a) only exempts merchants of artificial commemorative flowers. More specifically, Florida Statutes Section 212.08(7)(a) states, "[e]xempt from the tax imposed by this chapter is the sale of artificial commemorative flowers by bona fide nationally chartered veterans' organizations." Fla. Stat. Section 212.08(7)(a). Meanwhile, Florida Statutes Section 212.08(7), read in its entirety (provisions (a)- (jjj)), exempts a multitude of charitable groups including religious institutions and other veteran organizations. Therefore, a reference in the Coral Gables Municipal Code Section 46-41 limited to only subpart (7)(a) of Florida Statutes Section 212, i.e. merchants of commemorative artificial flowers, would appear to be erroneous as it would necessarily exclude a broad host of charitable organizations otherwise exempt under Section 212.08(7). Moreover, such a limitation would undermine the broad exemption otherwise created under Section 46-41 for charitable organizations. Indeed, Section 46-41 does not contain any express language regarding commemorative artificial flowers, but, rather, expressly provides exemption to "religious, charitable, scientific, educational, or veterans' institutions." City of Coral Gables Municipal Code Section 46-41. As a result, it is my conclusion that Section 46-41 of the Coral Gables Municipal Code currently contains a scrivener's error, which should be corrected so that it references Florida Statutes Section 212.08(7) as opposed to Section 212.08(7)(a). Please note that I reviewed these provisions with Yaneris who concurs with my analysis.

Hernandez, Cristina

From: Leen, Craig
Sent: Monday, April 01, 2013 4:01 PM
To: Thornton Richard, Bridgette
Cc: Figueroa, Yaneris; Franqui, Susan; Hernandez, Cristina
Subject: RE: Scivener's Error - Section 46-41 of the Coral Gables Municipal Code

Excellent analysis. Cristina, please place in the opinion folder.

Craig E. Leen
City Attorney

From: Thornton Richard, Bridgette
Sent: Monday, April 01, 2013 3:54 PM
To: Leen, Craig
Cc: Figueroa, Yaneris; Franqui, Susan; Hernandez, Cristina
Subject: Scivener's Error - Section 46-41 of the Coral Gables Municipal Code

Good Afternoon Mr. Leen,

As you requested, I reviewed Section 46-41 of the City of Coral Gables Municipal Code and I agree with your conclusion that it contains a scrivener's error with regard to its citation of Florida Statutes Section 212.08(7)(a). In relevant part, Section 46-41 provides as follows: "Solicitors or vendors making calls or soliciting orders on behalf of religious, charitable, scientific, educational, or veterans' institutions or organizations holding a sales tax exemption certificate under F.S. § 212.08(7)(a) are excluded from the operation of this section." City of Coral Gables Municipal Code Section 46-41 (emphasis added). However, Florida Statutes Section 212.08(7)(a) only exempts merchants of artificial commemorative flowers. More specifically, Florida Statutes Section 212.08(7)(a) states, "[e]xempt from the tax imposed by this chapter is the sale of artificial commemorative flowers by bona fide nationally chartered veterans' organizations." Fla. Stat. Section 212.08(7)(a). Meanwhile, Florida Statutes Section 212.08(7), read in its entirety (provisions (a) – (jjj)), exempts a multitude of charitable groups including religious institutions and other veteran organizations. Therefore, a reference in the Coral Gables Municipal Code Section 46-41 limited to only subpart (7)(a) of Florida Statutes Section 212, i.e. merchants of commemorative artificial flowers, would appear to be erroneous as it would necessarily exclude a broad host of charitable organizations otherwise exempt under Section 212.08(7). Moreover, such a limitation would undermine the broad exemption otherwise created under Section 46-41 for charitable organizations. Indeed, Section 46-41 does not contain any express language regarding commemorative artificial flowers, but, rather, expressly provides exemption to "religious, charitable, scientific, educational, or veterans' institutions." City of Coral Gables Municipal Code Section 46-41. As a result, it is my conclusion that Section 46-41 of the Coral Gables Municipal Code currently contains a scrivener's error, which should be corrected so that it references Florida Statutes Section 212.08(7) as opposed to Section 212.08(7)(a). Please note that I reviewed these provisions with Yaneris who concurs with my analysis. Please let me know if you have any questions or concerns.

Thank you,

Bridgette N. Thornton Richard
Deputy City Attorney for the City of Coral Gables
105 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Office: (305) 460-5084
Cell: (305) 801-5797

Fax: (305) 476-7795

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Hernandez, Cristina

From: Leen, Craig
Sent: Monday, April 01, 2013 4:13 PM
To: Foeman, Walter
Cc: Olazabal, Carmen; Tompkins, Jane; Thornton Richard, Bridgette; Figueroa, Yaneris; Hernandez, Cristina
Subject: FW: Scivener's Error - Section 46-41 of the Coral Gables Municipal Code

Walter,

Please see the opinion below, with which I concur. Pursuant to my authority under section 2-201(e)(9) of the City Code, please inform the Municipal Code Corporation that section 46-41 of the City Code contains a scrivener's error and should be revised to remove the "(a)" at the end of the citation to F.S. § 212.08(7)(a), so that it now simply states F.S. § 212.08(7). Also, please add a "d" to the end of the title where it presently says "permit require" so that it now says "permit required," which is another scrivener's error. The revised section should read as follows:

Sec. 46-41. – Declared a nuisance; permit required.

The practice of going in and upon any property, residential or business, in the city by solicitors and itinerant vendors of merchandise and the like, is hereby declared to be a private nuisance, punishable as such unless such person shall first have applied for and received from the city a permit as provided in this article except those solicitors or itinerant vendors making a visit upon the express invitation, oral or written, of an inhabitant of the premises or his or her agent.

Solicitors or vendors making calls or soliciting orders on behalf of religious, charitable, scientific, educational, or veterans' institutions or organizations holding a sales tax exemption certificate under F.S. § 212.08(7) are excluded from the operation of this section.

Respectfully submitted,

Craig E. Leen
City Attorney

From: Thornton Richard, Bridgette
Sent: Monday, April 01, 2013 3:54 PM
To: Leen, Craig
Cc: Figueroa, Yaneris; Franqui, Susan; Hernandez, Cristina
Subject: Scivener's Error - Section 46-41 of the Coral Gables Municipal Code

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organizations." Fla. Stat. Section 212.08(7)(a). Meanwhile, Florida Statutes Section 212.08(7), read in its entirety (provisions (a) – (jjj)), exempts a multitude of charitable groups including religious institutions and other veteran organizations. Therefore, a reference in the Coral Gables Municipal Code Section 46-41 limited to only subpart (7)(a) of Florida Statutes Section 212, i.e. merchants of commemorative artificial flowers, would appear to be erroneous as it would necessarily exclude a broad host of charitable organizations otherwise exempt under Section 212.08(7). Moreover, such a limitation would undermine the broad exemption otherwise created under Section 46-41 for charitable organizations. Indeed, Section 46-41 does not contain any express language regarding commemorative artificial flowers, but, rather, expressly provides exemption to "religious, charitable, scientific, educational, or veterans' institutions." City of Coral Gables Municipal Code Section 46-41. As a result, it is my conclusion that Section 46-41 of the Coral Gables Municipal Code currently contains a scrivener's error, which should be corrected so that it references Florida Statutes Section 212.08(7) as opposed to Section 212.08(7)(a). Please note that I reviewed these provisions with Yanerjs who concurs with my analysis. Please let me know if you have any questions or concerns.

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