



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Carlos Lopez, Firefighter
Miami Dade County Fire Rescue Department

Carlos Perez, Division Chief of Operations
Miami Dade County Fire Rescue Department

FROM: Etta Akoni, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-103, Conflicting/Outside Employment, Sections 2-11.1(j), (k),
(c), (g), and (h) County Ethics Code

DATE: August 21, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts:

You are employed as a Firefighter for Miami Dade County Fire Rescue Department (“MDFR”). Your position as a firefighter requires that you respond and assist with all fire, medical, and natural disaster-related emergencies in Miami Dade County, as instructed. You are also licensed as a paramedic by the State of Florida Department of Health.¹

You would like to engage in outside employment with a Florida Limited Liability company, Kelly Days LLC. On the State of Florida, Department of State, Division of Corporations website (also known as Sunbiz.org), you are listed the registered agent and sole authorized member for Kelly Days, LLC. According to you, Kelly Days, LLC is a website created to serve as a forum for first responders and front-line workers. You indicate that your role in Kelly Days, LLC will be to help run and organize the website and promote

¹ Florida Department of Health Paramedic license number PMD523360, Active Until December 1, 2024.

members. In order to register for the website, an interested person must be employed as a first responder or front-line worker. You indicate that you personally vet all individuals who register for the website.

According to the companies' website, kellydays.com, the company "is designed for our members to connect locally and abroad and to showcase our second jobs and businesses, and offer services, products, and advice within the group as an exclusivity. In addition to that, in developing this platform the forums are open access to ask for help from the group when all else fails. We can connect, whether it be giving local advice on, boating, fishing, traveling, hunting, construction, real estate, financial services, auto repairs, taking on new sports and anything and everything in between. This network should offer products, services and advice at a friends and family discount along with knowledge either be professional or local to its members."²

Events that are of potentially interest to your members are listed on the company website. You advised that you do not collect any funds for the events and do not currently charge for marketing on the site, though you may do so in the future. However, you advised that the company does have a PayPal account through which donations are solicited for the maintenance of the website.

You indicate that you will not be required to come in contact with the same or similar people or entities in both your potential outside employment and your County duties; you will not use the same or similar resources in your potential outside employment as you use in your County position; and you may come into contact with other county employees if they decide to join and participate in Kelly Days, LLC.

You also indicate that you do not have access through your County position to non-public information that is or could be relevant to your outside employment, you do not work in a position within the County where you would have the opportunity to recruit vendors, contractors, bidders, or members of the public who would utilize your outside employment services.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your outside employment.

Analysis:

A. Section 2-11.1(j) – Conflicting Employment Prohibited and Section 2-11.1(k) – Prohibition on Outside Employment

Miami-Dade County employees are required to obtain annual approval from their department directors/supervisors to engage in outside employment. See County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-

² <https://kellydays.com/> Accessed last on July 28, 2023

Dade County Ethics Commission regarding conflicts of interest in said outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 12 49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121. If approved to participate in outside employment you must also file an annual Outside Employment Financial Disclosure Statement, reporting any money received, or the lack thereof, from Kelly Days, LLC. (You would enter \$0.00 if you received no money). *See* County Ethics Code Secs. 2-11 and 2-11.1 (k)(2).

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Additionally, State of Florida law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between his private interests and the performance of his public duties. *See* §112.313(7)(a), Fla. Stat.

In previous opinions, the Ethics Commission has found that outside employment conflicts with government employment *when the two pursuits overlap or are closely related*. *See* RQO 12-11, INQ 12-159. Here, addressing possible conflicts related to your employment as a Firefighter with MDFR, based on the information provided to us, at this time it appears to be unlikely that your outside employment as the registered agent and sole authorized member for Kelly Days, LLC. would give rise to a prohibited conflict of interest because there is no overlap between your public duties and your outside employment: your outside employment is performed outside of your County hours; you may come into contact with other MDFR employees if they decide to join as members and participate in events held by Kelly Days, LLC.; you will not use the same resources in your outside employment as used in your County work; you will not have access to non-public information as part of your County employment that is, or could be, relevant to your outside employment as the registered agent and sole authorized member for Kelly Days, LLC.; and Kelly Days, LLC. is not a County vendor and has no business related to MDFR. *See* RQO 17-01. (discussing multiple factors to consider when evaluating whether outside employment is conflicting); INQ 21-13(A member of the Citizens' Independent Transportation Trust who was also the manager of the Bike305 Program for the Miami-Dade County Parks, Recreation, and Open Spaces Department, could serve as the uncompensated Vice-President of the Everglades Bicycle Club without giving rise to a prohibited conflict of interest because there was no overlap in duties that appeared to affect her independence of judgment).

At the time of this opinion, you do not hold a supervisory role within MDFR. If your role with MDFR changes and you move into a role that requires you to supervise other MDFR employees, please advise the Miami-Dade Commission on Ethics and Public Trust as said change may affect the outcome of this opinion. *See* INQ 23-66 (a conflict was found in the outside employment of a Facility Operations Manager for PROS, Zoo Miami Division, working as a laborer for Zoo Miami Foundation because the position may result in interactions with his subordinates while working for ZMF which may interfere with his independence of judgment in his public position).

Based on this analysis, your employment as a Firefighter with MDFR appears unlikely to give rise to a prohibited conflict of interest in relation to your employment with Kelly Days, LLC. because there is no overlap between your MDFR duties and your potential responsibilities to Kelly Days, LLC. However, if Kelly Days, LLC. meetings or events occurred during the regular business hours that you would otherwise be expected to work at MDFR, you would be required to take annual leave from your MDFR position in order to avoid any potential conflict. *See* INQ 22-97; INQ 18-222.

B. Section 2-11.1(c) Contracting with the County

Mr. Lopez has not indicated that Kelly Days, LLC. plans to contract with Miami Dade County to provide any services, activities, etc. However, in the event Kelly Days, LLC. decides to pursue a county contract, the County Ethics Code at Sections 2-11.1 (c)(2) and (d) allows you to enter into a contract, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of your duties to MDPD. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This means that you may not participate in determining the contract requirements or in awarding the contract that you may also apply for. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee, or administer the contract. *See* Sections 2- 11.1(c) and (n), Miami-Dade County Ethics Code. **Consequently, Kelly Days, LLC. may not enter into any contracts, agreements, or business arrangements with MDFR.** *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code. *See* RQO 07-18.

C. Section 2-11.1(g) – Exploitation of Official Position Prohibited

The County Ethics Code provides that no County advisory personnel, “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others,” unless expressly permitted by ordinance. County Ethics Code § 2-11.1(g). **This means you are prohibited from using your position with MDFR to secure any special privileges or exemptions for yourself and/or for Kelly Days, LLC.** *See id.*; INQ 21-13 (prohibiting a CITT Board Member from using her office to secure any special

privileges or exemptions for EBC, the non-profit organization on which she concurrently served as Vice-President).

More Specifically, you may not use County time or resources for the benefit of your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43. This includes the use of any Miami Dade County owned computer programs or software systems to verify potential members in Kelly Days, LLC. You shall not engage in activities that relate in any way to Kelly Days, LLC. during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240. Consequently, you may not promote Kelly Days, LLC. membership, Kelly Days, LLC. events or activities, nor Kelly Days, LLC. advertisers or marketing partners to other MDFR employees you have contact with while you are at work.

You may not use your official county title³ or resources to market Kelly Days, LLC. *See* RQO 99-42 (A County employee working for the Miami-Dade Office of Emergency Management may have his own website devoted to Y2K preparedness issues and may sell videos as a result so long as he does not use his County title or County resources in marketing his outside venture. Also, the employee must refrain from conducting any activities related to the outside venture during governmental work hours and is prohibited from exploiting his official position in his off-duty activities).

D. Section 2-11.1(h) Prohibition on Use of Confidential Information.

Section 2-11.1(h), Miami-Dade County Ethics Code prohibits you from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, directly or indirectly, for the benefit of Kelly Days, LLC. or for the benefit of Kelly Days, LLC. members. Pursuant to your responses regarding Kelly Days, LLC., the company does not charge its members for membership, does not charge other organizations for advertising with Kelly Days, LLC., and does not have any other income producing aspects, except for donations for operating costs. At any time in the future, should Kelly Days, LLC. decide to change this business model to monetize any aspect of its operations, please advise the Miami-Dade Commission on Ethics and Public Trust as said change may affect the outcome of this opinion.

E. Additional Advisements

Moreover, you may not represent Kelly Days, LLC. before any County board or agency, nor may you lobby the County. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics

³ According to the Miami Dade County Human Resources Department Bluebook system, your official title is Firefighter for the Miami Dade County Fire Rescue Department.

Code; RQO 04-173. In this case, that means that you may not contact anyone within Miami-Dade County government in an attempt to influence a decision about any contract or agreement Kelly Days, LLC. is seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code and INQ 21-21.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.