

## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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ADVOCATE  
Loressa Felix  
GENERAL COUNSEL

August 29, 2023

Honorable Raquel A. Regalado  
County Commissioner, District 7  
Stephen P. Clark Center  
111 NW 1st Street, Suite 220  
Miami, Florida 33128

Re: INQ 2023-110, Section 2-11.1(j), Miami-Dade Code, Conflicting employment prohibited.

Dear Commissioner Regalado:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting guidance regarding the applicability of Section 2-11.1 of the Miami-Dade Code to your outside employment as the director of a private university academic institute.<sup>1</sup> In addition to Section 2-11.1(j) of the County Ethics Code relating to outside employment, a number of other Ethics Code provisions are also implicated. Kindly consider the following.

### Facts:

You are a member of the Board of County Commissioners and represent constituents in District 7. You previously served as an elected School Board member. You are an attorney and broadcast journalist. You have recently accepted a position as the Director of the St. Thomas University's Institute of Ethical Leadership (IEL). The IEL's self-described mission is the preparation of students primed to address complex challenges of our world including the erosion of ethical standards in organizations and government. The IEL confers Bachelor's, Master's, and Doctoral degrees, and combines studies in humanities, behavioral and social sciences, business and management, research methods, and technology.

The Dean of St. Thomas University's Biscayne College, which includes the IEL and other academic programs, has described your various responsibilities as the IEL Director. These will

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<sup>1</sup> Section 2-11.1 of the Miami-Dade Code will also be referred to as the County Ethics Code.

include student recruitment, teaching courses, and advising graduate students. Additionally, as an academic program director, you will also have responsibilities consistent with other similarly situated university leaders and will be involved in evaluating adjunct faculty members and committee work, as assigned.

While it is not expected that you will be specifically tasked with soliciting grants or donations in your IEL Director role, you will be expected to accommodate persons or entities that wish to donate to the university and then refer prospective donors to the Philanthropy Services Department that has its own director.

St. Thomas University has received County grant funds in the past and may apply for County grants in the future. For example, in 2020, the Board of County Commissioners awarded \$3,000,000 in Coronavirus Relief Funds (CRF) to St. Thomas University's Center for Pandemic, Disaster and Quarantine Research (PDQ). The grant funds stemmed from a Coronavirus Aid, Relief, and Economic Security Act (CARES Act) allocation made to the County. Notably, the PDQ was led by a then County Commissioner.

Issue:

Whether a member of the County Commission may serve as the director of a private university academic institute that may receive County grant funds.

Discussion:

As regards outside or private employment, Section 2-11.1(j) of the County Ethics Code, prohibits a County Commissioner from accepting outside employment that would impair his or her independence of judgment in the performance of his or her public duties.

Elected officials may engage in employment consistent with their public duties and where not otherwise inconsistent with the County Ethics Code, and there is no per se prohibition on an elected official also being employed as the executive director of a nonprofit entity.<sup>2</sup>

In interpreting that section, the Ethics Commission has repeatedly opined that academic engagements with universities are permissible as long as there is no connection or overlap between public duties and private employment duties.<sup>3</sup>

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<sup>2</sup> INQ 2022-158; RQO 08-24.

<sup>3</sup> INQ 2020-123 (County Commissioner may serve as the director of a university's center for pandemic, disaster, and quarantine research even though the university is a County vendor); INQ 17-236 (County assistant museum curator whose work site exposes graduate students to exhibition theories and practices may accept an adjunct lecture position at university when there is no overlap between county position and adjunct lectureship); INQ 17-202 (County corrections lieutenant in charge of monitored release program may accept an adjunct professor position at a university in

Thus, even if the employing university contracts with the County as a result of a grant award or other service agreement, the County Ethics Code still does not prohibit a public official from employment with a County contractor or vendor.<sup>4</sup>

However, Section 2-11.1(m)(1) of the County Ethics Code, consistent with the provisions contained in Section 112.313(15), Florida Statutes, prohibits an elected officials from receiving any compensation directly or indirectly, for services rendered to a third party that has applied for or received a grant from the County, in connection with the grant application.

Also, Sections 2-11.1(g) and (m)(1), of the County Ethics Code, respectively, prohibit the official from using his or her official position to secure special privileges or exemptions for his or her employer, from utilizing any public resources in his or her private employment, and also from representing the outside employer before the County in any matter.

Consequently, if the employer should decide to apply for a grant from the County and the receipt of the grant is conditioned on a grantor/grantee contract, then neither the official nor any member of his or her public staff may be involved in the initial grant application or award, or its subsequent supervision, oversight, compliance, or enforcement.

More specifically, the Ethics Commission has previously opined that the elected official may not sign any documents or grant applications which will be presented to the County. Also, should any issues or disputes arise between the County and the nonprofit agency, the official would not be permitted to participate in meetings or discussions regarding the same.<sup>5</sup> The prohibitions are expansive and include *any* communications, in any form, intended to influence an individual within the County to take an official action regarding funding from the County.<sup>6</sup>

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the department of criminal justice as there is no overlap between county and outside employment duties, even though the university is a County contractor).

<sup>4</sup> See INQ 2022-158; RQO 2021-01; RQO 12-05; INQ 09-195; INQ 08-166.

*But see* Code of Ethics for Public Officers and Employees (State Ethics Code) Section 112.313(7), Florida Statutes, prohibiting a public officer from holding an employment or contractual relationship with any business entity or agency which is doing business with his or her agency, and Section 112.313(15), Florida Statutes, providing an exception if the employment is with a tax-exempt organization contracting with the official's agency, as long as the officer is not directly or indirectly compensated as a result of the contract.

<sup>5</sup> See generally INQ 2021-89; INQ 2021-25; INQ 2021-70.

<sup>6</sup> See In re: Commissioner Dorrin Rolle, COE Enforcement Case No. 10-14; INQ 16-48, 16-22, INQ 14-170, INQ 12-13, INQ 11-01, and INQ 10-201.

If the official's employment terms will include fundraising on behalf of a not-for-profit, Section 2-11.1(e)(2)g. of the County Ethics Code permits County officials to solicit on behalf of the nonprofit where the official does not receive any compensation as a result of the solicitation.

Elected officials are encouraged to avoid direct, targeted solicitations of County vendors and lobbyists on behalf of nonprofits, even if the solicitation is not prohibited, in order to avoid situations where a County vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County.<sup>7</sup>

Solicitations by an elected official on behalf of his or her outside employer are problematic, even if the employer is a nonprofit. While it would be most advisable to avoid any charitable solicitation on behalf of the outside employer, if the official engages in these activities, he or she should not use his or her official title or any references to Miami-Dade County in these activities.<sup>8</sup>

The compensation or retainer terms of private employment with a County contractor or vendor are addressed in Section 2-11.1(u) of the County Ethics Code. That section imposes a limited prohibition regarding the terms of the employment with the County contractor or vendor and provides that no person that is serving as an elected County official shall enter into a business transaction with persons or entities that are contracting with the County "unless said business transaction is an arm's length transaction made in the ordinary course of business." Business transaction includes a contract where persons render services for value or consideration.<sup>9</sup>

Section 2-11.1(d) of the County Ethics Code, its voting conflict provision, prohibits elected officials from voting on or participating in any matter presented, if the official *would or might, directly or indirectly, profit or be enhanced* by the action. This conflict voting prohibition is stricter than the state law standard codified in section 112.3143 (1)(d), Florida Statutes, which provides that an official shall not vote in upon any measure which would inure to his or her special private gain or loss. The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect.<sup>10</sup>

Consequently, a voting conflict arises if the voting member has an enumerated relationship with an entity affected by the vote. The Ethics Commission has opined that a County Commissioner's

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<sup>7</sup> See INQ 2021-66; INQ 16-275.

<sup>8</sup> See INQ 17-34.

<sup>9</sup> See RQO 12-05 (Mayor may contract for advertising for his law firm with radio stations that currently hold contracts with his city as long as the contracts are negotiated at arms-length and no preferential terms are accepted); INQ 14-100; INQ 16-136.

<sup>10</sup> See INQ 14-86.

employment with a nonprofit that receives funding from the County gives rise to a conflict of interest prohibiting the official's consideration or vote on any matter involving the employer. <sup>11</sup>

Opinion:

Based upon the facts as provided, and consistent with the plain language of the cited County Ethics Code provisions and the reasoning underlying prior ethics opinions, there does not appear to be a conflict of interest between your role as a member of the Board of County Commissioners and your employment as the Director of the St. Thomas University Institute of Ethical Leadership.

You should ensure that there is no overlap between your role as a County Commissioner and your paid private employment, and you may not use your official position or public resources to benefit your employer. If the employer applies for a grant from the County, then neither you nor any member of your staff should have any involvement with any aspect of that process.

You are cautioned regarding charitable solicitation activities on behalf of her employer. Should you engage in these activities then you may not use your official title, County resources, or any other accoutrement of public office in these activities. You should also refrain from any direct or targeted solicitations of County vendors, lobbyists, or persons or parties seeking some benefit from the County.

The terms of your compensation or retainer by the university should be consistent with those involving similarly situated persons and you may not continue in the position if you will be compensated, directly or indirectly, from County grants awarded to the university.

Finally, as regards to votes relating to the IEL or the university, you would have a conflict of interest due to your employment relationship and you should not participate or vote on any items involving your employer.

I hope this opinion is of assistance and my legal staff and I remain available to discuss any matters addressed herein. Also, this opinion is limited to the facts as presented to the Ethics Commission and is limited to an interpretation of the County Ethics Code. While state laws may be referenced, this agency is not authorized to interpret these laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

Thank you again for requesting ethics guidance and if you have any questions regarding this opinion, please do not hesitate to contact me.

Sincerely,



Jose J. Arrojo  
Executive Director

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<sup>11</sup> See generally INQ 2022-158; RQO 15-04.

cc: All COE Legal Counsel

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.