



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Fabius Pierre, Bus Hostler
Miami-Dade County Department of Transportation and Public Works

Craig Cooper, Transit Yard Supervisor
Miami-Dade County Department of Transportation and Public Works

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

SUBJECT: INQ 2023-114 Conflicting/Outside Employment, Sections 2-11.1(j) and (k), County Ethics Code

DATE: August 31, 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 Bus Hostler for the Miami-Dade County Department of Transportation & Public Works (“DTPW”). Your DTPW job duties primarily include cleaning and refueling Miami-Dade County public buses. You are seeking to engage in outside employment as a Park Aide with Broward County Parks and Recreation Department at the Tree Tops Park, in Davie, Florida.

Broward County Parks and Recreation Department is a division of the government of Broward County, Florida. As a Park Aide, you advised that your primary job duties will be cleaning the park bathrooms, cleaning the park in general, and assisting with other park functions as needed. Your job with Broward County Parks and Recreation Department will be performed outside of your County employment hours. A search of the Miami-Dade County vendor listings indicates that Broward County Parks and Recreation Department is not a Miami-Dade County vendor. 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, your outside employment will not require that you interact with County employee, departments, or County boards, even for routine matters.

Issue:

Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a Park Aide with Broward County Parks and Recreation Department.

Analysis:

Sections 2-11.1(j) and (k) of the 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 or her official duties or creates a conflict between the County employee's public duties and his or her private interests. *See also* AO 7-1 (County's administrative order reiterates that, "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").

Conflicting employment can occur when the outside employment is closely related to the employee's public duties and/or where the County employee deals with the same people or entities in both his/her outside employment and in his/her public position, e.g., similar clients, suppliers, or subcontractors. *See* RQO 15-03. In general, if an employee's outside employment is totally unrelated to his/her County employment, conflicts would generally not arise¹. *See* INQ 2023-86 (DTPW Bridge Operator's outside employment as a warehouse associate with Amazon is unrelated to and does not create a conflict of interest with her County employment.); INQ 2022-47 (A DTPW Train Control Supervisor's outside employment as a part time vocational instructor and repair technician is unrelated to and does not create a conflict of interest with her County employment.)

Based on the information provided it appears to be unlikely that the type of outside employment that Mr. Pierre is seeking to engage in would impair his independence of judgment in the performance of his County duties as a Bus Hostler. This is because there is no overlap between his public duties and his outside employment: his outside employment will be performed outside of his County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as used in his County work; and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment. *See* RQO 17-01; RQO 16-02.

¹ Additionally, State 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. §112.313(7)(a), Fla. Stat. (2017).

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in 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.

Opinion:

After a review of all of the facts presented regarding your outside employment as a Park Aide with Broward County Parks and Recreation Department, we conclude that this type of work is not likely to create a conflict of interest with your County employment.

However, please note that certain limitations will apply:

- You may not use County time or resources for Broward County Parks and Recreation Department. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You shall not engage in activities that relate in any way to Broward County Parks and Recreation Department during regular Miami Dade County 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.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit for the benefit of yourself or Broward County Parks and Recreation Department. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself or Broward County Parks and Recreation Department. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not present before any County board or agency on behalf of Broward County Parks and Recreation Department. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties as a Park Aide, it is important to note that you would be prohibited from doing any such activities on behalf of Broward County Parks and Recreation Department.

- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your supervisor and department director through the designated County human resources system. County employees are also required to file an annual Outside Employment Financial Statement, disclosing income earned, or the lack thereof, from your outside employment, on a yearly basis with the County's Elections Department by 12 Noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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.