



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vanessa Beniquez, Library Page
Miami-Dade Public Library System

FROM: Nolen Andrew Bunker, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-116; Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(k), Prohibition on outside employment.

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 related to your proposed outside employment.

Facts

You are currently employed by the Miami-Dade Public Library System (“MDPLS”) as a Library Page. Your job duties primarily include working at the Doral Branch of MDPLS, where you sort and arrange library books onto book trucks, reshelve library books and other materials, assist library patrons at the circulation desk, maintain the appearance and cleanliness of the library, and process returned library books and materials for reshelving or return to their assigned branches.

You advised that you wish to engage in outside employment as a Graphic Design Intern with KindArtStudio. You advised that KindArtStudio is a startup company owned and operated by Ms. Michelle Swift, and that Ms. Swift is in the process of gaining startup funding and registering her corporation with the State of Florida.¹ You advised that KindArtStudio is not a County vendor and a records search indicated that it is not registered as a County vendor.

With regard to your work for KindArtStudio, you stated that your primary responsibilities as a Graphic Design Intern will be related to design and marketing. Your services will include logo

¹ A record check with the Florida Department of State, Division of Corporations, confirmed that KindArtStudio is not the name of any entity currently registered with the State.

redesigning, creating logo icons for social media, identity graphics, packages, and banners for YouTube and other websites, creating digital marketing templates and marketing packages such as letterheads, business cards, and pamphlet templates. You further advised that you will not encounter the same or similar people or entities in your proposed outside employment as you encounter in your County position. You further advised that your MDPLS position does not give you access to non-public information that is, or could be, relevant to your proposed outside employment, you advised that you will not use the same or similar resources for your proposed outside employment as those that you use in your County work, though you acknowledged that you will likely use Adobe programs such as Illustrator, as well as other programs like Canva, in your proposed outside employment. Finally, you advised that the internship is currently uncompensated, but that you may receive compensation in the future.

Issue

Whether any prohibited conflict of interest may exist between your County service and your proposed outside employment as a Graphic Design Intern with KindArtStudio.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder 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.”

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

Outside employment is considered “any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated.” RQO 17-03. Several factors are considered to determine whether a potential conflict of interest exists between an individual’s County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the individual has decision-making authority over the same subject matter that the outside employment concerns; whether the individual solicits business or customers in the same area over which he or she has jurisdiction; whether the individual will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the individual serves funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 21-66.

In practice, a Library Assistant II could engage in outside employment as a Parenting Registrar for a private company registered parents for parenting classes because County work was unrelated to her outside employment, and she did have any authority over agreements between the County and her private employer. *See* INQ 18-27. As another example, a Graphics Technical Supervisor for the then-extant Miami-Dade Transit Department could engage in outside employment as a freelance graphic designer because, although similar to his County work, his outside employment would not impair his independence of judgment in the performance of his County duties. *See* INQ 14-59; *see also* INQ 13-72 (a Customer Service Advocate for the then-extant Miami-Dade Community Information and Outreach Department could engage in outside employment as a freelance graphic designer and perform work for Jackson Memorial Hospital because her outside employment would not impair her independence of judgment in performing her County work).

Here, as a preliminary matter, your proposed work as a Graphic Design Intern for KindArtStudio constitutes outside employment because the type of work that you will perform for KindArtStudio as an uncompensated intern is the kind of work that is compensated or customarily compensated. *See* RQO 17-03; INQ 14-59 (County employee engaged in outside employment as a graphic designer); INQ 13-72 (County employee engaged in outside employment as a graphic designer); *see also* INQ 17-130 (a Librarian Assistant was engaged in outside employment when providing housekeeping and gardening services to a friend on a regular basis because this type of activity is customarily eligible to be compensated).

Therefore, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment that you are seeking to engage in will impair your independence of judgment as a Library Page.** This is because there does not appear to be overlap between your public duties and your anticipated responsibilities as a Graphic Design Intern for KindArtStudio: your proposed outside employment will be performed outside of your County hours; you will not come into contact with the same or similar persons or entities in your proposed outside employment who are involved in your County work; you will not use the same or similar resources in your proposed outside employment; and you do not have access to non-public information as part of your County position that is or could be relevant to your proposed outside employment. *See* RQO 17-01; INQ 21-66; INQ 18-27; INQ 14-59.

Opinion

Based on the facts presented here and discussed above, you would be engaged in outside employment by working as a Graphic Design Intern for KindArtStudio. *See* RQO 17-03; INQ 14-59; INQ 13-72. **Furthermore, you would not have a prohibited conflict of interest in your proposed outside employment as a Graphic Design Intern for KindArtStudio.** *See* RQO 17-03; INQ 21-66; INQ 18-27; INQ 14-59.

However, the Commission on Ethics strongly recommends that you abide by the following limitations regarding your proposed outside employment with KindArtStudio:

- You may not engage in activities that relate in any way to your outside employment during your scheduled work hours (including phone calls, text messages, e-mails, or other

communications) and you may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with your outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.

- You may not exploit your County position to secure special privileges or exemptions for yourself and/or for KindArtStudio and its clients. *See* County Ethics Code 2-11.1(g).
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of KindArtStudio or its clients. *See* County Ethics Code Section 2-11.1(h).
- You may not represent KindArtStudio or its clients before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of your potential activities as a Graphic Design Intern for KindArtStudio, it is important to note that you would be prohibited from doing any such activities on behalf of KindArtStudio or its clients.
- You must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director, and **you must file an Outside Employment Statement² with the County's Elections Department by noon on July 1st of each year for the prior year's outside employment** regardless of whether you made a profit or not in your outside employment. *See* County Ethics Code Section 2-11.1(k)(2).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from or under state law. Questions regarding possible conflicts based on MDPLS directives should be directed to MDPLS or the Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 Commission on Ethics 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.

² You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.