



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Alejandra Duran, Veterinarian
Miami-Dade Animal Services Department

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-120, Section 2-11.1(j) and (k), Conflicting employment prohibited

DATE: September 7, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your request for approval for outside employment as a veterinarian.

Facts

You are employed by the Miami-Dade Animal Services Department (“ASD”) as a veterinarian. Your primary job duties involve health check-ups and physical exams of animals brought to the County shelter, surgeries and other treatments. You are also assigned to population management within the shelter, which involves moving sick animals to isolation areas and moving recovered animals back into the general population where they can be adopted.

You are seeking approval to engage in outside employment as a veterinarian at South Miami Animal Clinic, a private veterinary practice in South Miami. This clinic has not and does not intend to contract with ASD or any County department or agency. The clinic is included on a list of multiple local veterinarians who have agreed to provide first visits for free to pets adopted from the County animal shelter. The clinic does not pay the County to get on this list and is not reimbursed by the County to provide the free first visit.

You expect to work for them twice a month, or possibly more, as needed by the clinic. You would perform typical veterinary services at the private clinic, and you would do so outside of your county work hours, using equipment and resources provided by the private clinic. The client base of the private clinic is different from the client base of ASD, which does provide certain veterinary services to low-income residents, but generally only treats animals in its care up until adoption.

You previously requested guidance from the Ethics Commission, and were advised that you were permitted to engage in outside employment as a private veterinarian when there was no overlap between your county responsibilities and your private outside employment. *See* INQ 17-175. Your supervisor has requested a new opinion because your proposed outside employment has changed.

Issue

Whether any prohibited conflict of interest may exist between your employment at ASD and your proposed outside employment as a veterinarian for private clients.

Analysis

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 responsibilities 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."

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 22-22; 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, at any time, that the outside employment 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 23-15; INQ 12-49.

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 employee has decision-making authority over the same subject matter that the outside employment concerns; whether the employee solicits business or customers in the same area over which he or she has jurisdiction in his or her public duties; whether the employee 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 employee serves funds or has contracts or agreements with his or her outside employer. *See* RQO 17-01; INQ 21-54.

Outside employment is more likely to conflict with County employment "when the two pursuits overlap or are closely related." INQ 16-89 (citing RQO 12-11, INQ 12-159). However, "a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest." INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

In the past, the Ethics Commission has found that a veterinary technician at ASD did not have a conflict of interest in her outside employment as a veterinary technician for a private clinic because her public and private roles did not overlap, and she was not in a position to refer potential clients to her private employer. *See* INQ 22-88. Similarly, a veterinarian at Zoo Miami was permitted to provide private veterinary care through the corporation she started because her public and private duties did not overlap and she was not working for entities that have contracts or agreements with Miami-Dade County. *See* INQ 23-100.

The Ethics Commission has also held that use of an acquired knowledge base in outside employment does not in and of itself create a conflict of interest. *See* INQ 20-43. In this instance, both your county position and your proposed outside employment appear to require you utilize the same knowledge base, however, there is no indication that a prohibited conflict of interest exists.

Here, based on the information provided to us, **it appears to be unlikely that the type of outside employment you are seeking to engage in would impair your independence of judgment as a veterinarian at ASD.** Therefore, the similarities in the services you would be providing as a veterinarian in the two positions do not preclude you from engaging in outside employment, particularly as you have indicated that you will not work for any County vendors or entities with whom the County has agreements; you will not use any equipment or resources which you use in your County employment; you will not work with the same people or similar entities that you currently work with in your County employment; the client base of the private clinic is different from the users of ASD's veterinary services; and you will not refer ASD clients to the private clinic. Additionally, you have been advised that **you cannot share non-public information you have access to as part of your County employment** with anyone outside of ASD, including your outside employer or clients. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); RQO 16-02; INQ 21-54.

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest in your outside employment as a private veterinarian at South Miami Animal Clinic.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on your supervisor's permission for you to engage in outside employment with South Miami Animal Clinic:

- 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, County vehicles or information contained in County databases or records) in connection with you 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 Zoological Veterinarian Services or its clients. *See* County Ethics Code 2-11.1(g). **Specifically, you may not offer the veterinary services of the South Miami Animal Clinic to anyone during County working hours, including members of the public, co-workers, other County employees or any entity with which ASD has a contract or agreement.** *See* INQ 19-101.
- 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 South Miami Animal Clinic **or its clients.** *See* County Ethics Code Section 2-11.1(h).
- You may not represent South Miami Animal Clinic **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 veterinarian, it is important to note that you would be prohibited from doing any such activities on behalf of your corporation 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 Statement¹ 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 ASD or under state law. Questions regarding possible conflicts based on ASD directives should be directed to ASD 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/>.

¹ The required form can be found online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

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.