

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Via Facsimile Only:

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Xavier E. Albán
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City of Miami Office of the City Attorney
444 Southwest 2nd Avenue
Miami, Florida 33130

Re: INQ 2023-121, Section 2-11.1(g), Miami-Dade Code, Exploitation of Official Position

Dear Mr. Albán:

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 (“County Ethics Code”) to a municipal official’s hiring of a great-uncle’s grandson as his or her Chief of Staff.¹ Kindly consider the following:

Facts:

A City of Miami elected official wishes to hire a second cousin as his or her Chief of Staff.² The official advises that his or her relative is “highly qualified” and has previously served in similar or comparable positions with two (2) agencies of the federal government that required the second cousin to obtain and maintain a “Top Secret” security clearance (“TS-SCI”)

¹ The official has been advised by the Florida Commission on Ethics that because a great-uncle’s grandson or second cousin are not enumerated relationships in the state nepotism statute, then the official’s hiring of the distant relative would not violate Section 112.3135, Florida Statutes.

² A “great-uncle’s grandson” will be referred to as a second cousin.

Issue:

Whether a municipal official may hire his or her second cousin as the official's Chief of Staff.

Discussion:

As a preliminary matter, the County Ethics Code is applicable to County officials and personnel and also constitutes the minimum standard of ethical conduct and behavior for all municipal officials including City of Miami elected officials.³

The County Ethics Code does not contain an anti-nepotism provision, nor does it explicitly address nepotism.⁴

However, Section 2-11.1(g) of the County Ethics Code, which prohibits county and municipal officials from using their public positions to secure special privileges or exemptions for themselves or others except as has been permitted by other ordinances, has been interpreted to bar officials from any action involving hiring, promoting, or advocating for the advancement of an *immediate family member*. Immediate family members are defined as: spouse, domestic partner, parents, stepparents, siblings, half-siblings, stepsiblings, children, and stepchildren.⁵

While Section 2-11.1(g) does not bar officials from hiring or promoting *more distant family members*, it has been interpreted to impose limitations on hiring and supervision of these relatives and close friends.

As regards hiring, the Ethics Commission has interpreted Section 2-11.1(g) to require objectivity when hiring distant relatives. For example, in RQO 01-78, the Ethics Commission opined that an elected official could hire her husband's cousin as her chief of staff because other candidates were interviewed and there was no showing that the relative by marriage received any special benefit. Similarly, in INQ 18-148, the Ethics Commission opined that this section permitted a village manager to hire a distant relation as an assistant manager, so long as the hiring was based on objective factors and not the familial relation.

As regards the supervision, in INQ 2023-51, the Ethics Commission cautioned that if an assistant department director will not be able to supervise a close friend fairly or equitably, then he should consider a delegation of his work authority over the friend. Also, in INQ 2022-03, the Ethics Commission likewise suggested that an assistant department director should recuse himself from involvement in personnel related actions decisions which might affect his sister-in-law,

³ Section 2-11.1(a), Miami-Dade Code.

⁴ See RQO 01-78; INQ 22-139; INQ 22-89; INQ 22-03.

⁵ Section 2-11.1(b)(9), Miami-Dade Code.

including performance evaluations or ratings, and instead to delegate that authority to another supervisor.

While the Ethics Commission does not have the authority to interpret municipal charter or ordinance provisions except for Conflict of Interest and Code of Ethics Ordinances, Lobbyist Registration and Reporting Ordinances, Ethical Campaign Practices Ordinances, or Citizens' Bill of Rights, a reference to a City of Miami personnel ordinance is required.⁶ The City of Miami Mayor and individual Commissioners are authorized by municipal ordinance to nominate or hire their staff members, and determine the salary, and tenure of such employees.⁷

Arguably thus, the City of Miami Mayor and individual Commissioners may be permitted by ordinance to hire their staff members without adhering to the requirements of Section 2-11.1(g) of the County Ethics Code.

Finally, the Ethics Commission has in the past relied on its adopted rules of procedure to comment on scenarios where no ethical prohibition existed, but the proposed transaction nevertheless created an appearance of impropriety affecting the public's trust in government. For example, the Ethics Commission has suggested that while a prohibited conflict of interest may not have existed, a government manager should nevertheless remove himself from any matters involving his cousin's clients.⁸

Opinion:

Based upon the facts as provided, and consistent with the plain language of the County Ethics Code, Ethics Commission Rules of Procedure, and the reasoning underlying the above referenced and cited ethics opinions, there does not appear to be a conflict of interest prohibiting a City of Miami elected official's hire of his or her second cousin as Chief of Staff.

Arguably, the limitations on hire and supervision of relatives or friends imposed by Section 2-11.1(g) of the County Ethics Code, as interpreted by the Ethics Commission, may not apply to City of Miami elected officials inasmuch as the City of Miami Code of Ordinances specifically authorizes officials to hire, and determine the salary and tenure of their staff members.

Nevertheless, to avoid an appearance of impropriety, the official is encouraged to use an objective hire process in the selection of his or her Chief of Staff, that should include, at a minimum, hiring someone that is actually qualified for the position, setting a salary comparable to that paid to other

⁶ See Section 2-1068, Miami-Dade Code ("Ethics Commission Enabling Ordinance").

⁷ Chapter 40, Article III, Sec. 40-61, City of Miami Code.

⁸ See Rule 2.1(b), COE Rules of Procedure (The Ethics Commission may also opine on whether particular conduct may result in a breach of public trust or an appearance of impropriety); INQ 16-76.

similarly situated employees, and evaluating the staff member's performance using measures that are utilized to grade the performance of other municipal employees.

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 statutes or municipal personnel ordinances 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 and municipal counsel should be consulted regarding personnel ordinances.

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

Sincerely,



José J. Arrojo
Executive Director

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.