



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Odon Diaz, Fire Plans Processor
Miami-Dade County Fire Rescue

Alain Iglesias, Deputy Fire Marshall
Miami-Dade County Fire Rescue

FROM: Loressa Felix, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 2023-123 Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: September 8, 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 Fire Plans Reviewer for Miami-Dade County Fire Rescue (MDFR). You would like to engage in outside employment as a zoning plan reviewer for C.A.P. Government, Inc.

You are employed at the Miami-Dade Fire Rescue Department (MDFR) as a Fire Plans Processor in the Department's Fire Prevention Division. Your County job duties include reviewing life safety plans as part of the County's fire prevention building permitting process administered by MDFR to ensure compliance with the Miami-Dade County Fire Prevention Code¹. The State Fire Code designates to local governments the fire permitting function provided that the local governments

¹ Chapter 14 of the Miami-Dade County Code adopts the State of Florida Fire Code at Chapter 633, Florida Statutes as amended by the State periodically.

follow the minimum standards set out in the state statute, local governments may set stricter standards.²

Miami-Dade County develops, constructs, and administers County-wide public work projects such as transportation hubs, hospital facilities, and water treatment facilities among others. The facilities may be County-wide or may be located both in unincorporated Miami-Dade County as well as within Municipal boundaries. These projects generally require fire permits. Although permitting within a municipality would normally be performed by the municipality, it is our understanding that for County projects built within municipal boundaries, the practice by the County is to enter into inter-local agreements between the County and municipality stipulating that these County projects will be permitted by the County rather than the municipality.

You inquire regarding the application of the County Ethics Code to your potential outside employment as a zoning plan reviewer for C.A.P. Government, Inc. C.A.P. Government, Inc. (CAP) is a Florida for profit company that provides clients with building department services including administration, plans review, inspection, and code compliance services. CAP offers administrative and technical support to Building Departments in municipalities throughout the State of Florida including supervision, planning, secretarial support, plans review, inspections, etc. CAP is currently a vendor for the County, contracting with the Department of Regulatory and Economic Resources, Building Department specifically the Structural Plan Review Section. However, they do not contract with MDFR.

We have consulted with your supervisor at MDFR and he advised that he saw no issue or conflict with the outside employment request. Additionally, he advised that zoning is a different County department with completely different codes and services unrelated to fire and MDFR disciplines as it pertains to plans review. He noted that there would be no occasion where a zoning review would be in conflict with a review by MDFR or the services provided by MDFR.

You advise that your outside employment would occur outside of your County hours of employment and CAP would provide you with the resources necessary to perform your outside job duties. You further advise that your work may involve same people or similar entities that you currently work with in your County employment, such as architects, engineers, contractors, building owners, or tenants. But you will not interact with the County employees, departments, or boards in your outside employment, nor would you have access to confidential information that would be relevant to your outside employment. Lastly, you do not work in a County position which requires you to recruit vendors, contractors, bidders, or members of the public who could use your outside employment services.

² See Fla. Stat. §633.118. The Miami-Dade fire ordinance adopts the State fire code, provides for additional requirements, and specifies that for projects within unincorporated Miami-Dade, the County will administer and issue fire permits; fire permits for projects within municipal boundaries in municipalities that have a fire department, are administered, and permitted by the municipality. See Miami-Dade Code §14-39.

Issue:

Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a zoning plan reviewer.

Analysis and Opinion:

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 duties 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 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.

In consideration of your inquiry, we must look at several factors, one of which is whether there is similarity in your duties as a Fire Plans Reviewer for MDRF and your prospective outside employment as a zoning plan reviewer. In this instance, both positions require you to utilize a similar knowledge base involving plans review; however, there is no indication that a prohibited conflict of interest exists. *See* INQ 21-54; INQ 21-64; and INQ 22-114. The Ethics Commission has found that outside employment that shares some of the knowledge base used in your County work but does not involve overlap of duties or involve administration or oversight of County personnel projects or processes would not generally create a conflicting employment. *See* RQO 10-01; INQ 20-43; and INQ 21-95.

Further, the Ethics Commission has previously held a County Fire Plans Processor for MDRF does not have a conflict of interest involving his employment at the County and his work as a part-time Fire Sprinkler Plans Processor for the City of Hialeah Fire Department. *See* INQ 21-95. While his outside employment as a Fire Sprinkler Plans Processor for the City of Hialeah shares some of the knowledge base he has acquired because of his work at the County conflicts are unlikely. *See id.* This is because the City does not apply for fire permits at the County and conversely the County does not apply for Fire permits at the City; his outside employment will not require interaction with the same personnel; it will occur outside his County hours; and it will be performed using City of Hialeah resources. *See id.*

Additionally, the Ethics Commission has previously opined that 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. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment particularly as you have indicated that your outside employer does not contract with your County department; all equipment and resources which you use in your outside employment will be provided by your outside employer; there is no overlap of duties between the two positions that involve administration or oversight of County personnel projects or processes; you will not come into contact during your outside employment with County employees, departments, or boards; and you will work outside your County hours.

Nevertheless, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment in order to avoid a conflict:

- You may not use County time or resources in your outside employment. *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 your outside employment during regular 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, a benefit for CAP, or CAP clients. *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, CAP, or CAP clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent CAP or CAP clients before any County board or agency. *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 for CAP it is important to note that you would be prohibited from doing any such activities on behalf of CAP or CAP clients.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by 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.

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.