



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Dr. Galen Treuer, Resilience Coordinator 2
Regulatory and Economic Resources Department (RER)

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

SUBJECT: INQ 2023-124, Section 2-11.1(k), Outside Employment

DATE: September 12, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding outside employment requirements in reference to your participation in two nonprofit community organizations.

Background:

You are the Climate Tech and Economic Innovation Manager in the Office of Economic Innovation and Development for the Miami-Dade County Regulatory and Economic Resources Department (RER). You serve as an advisor to the Director of RER and the Office of the Mayor on policies related to climate change, resilience, economic development, technology innovation and support initiatives.

Your responsibilities include coordinating with the Office of the Mayor and economic development staff to set and pursue goals to further the County strategic plan, economic development strategy, and resilience strategies; liaising for emerging technology and democratic ownership models that support clean energy, water management, natural infrastructure, climate resilience, ESG investment, and ecosystems through sustainable finance, innovative data use, and regenerative or circular business models; liaising and supporting various workforce training and development programs to meet the current and future needs of the blue-green technology sector through partnerships with local agencies and educational institutions; and sharing the County's efforts to achieve a just transition to a resilient future-ready economy through convenings, conversations, publications, and presentations.

You are also responsible for supporting incubators and accelerators that create opportunities for stakeholders including but not limited to county employees, government agencies, municipalities, startups, investors, established businesses, academics, nonprofits organizations, cultural creatives, and residents to collaborate on pilots and tests for new technologies and business models; importing ideas from other communities; and assessing and scaling successes.

Friends of the Underline, a nonprofit organization, works to support the transformation of the underutilized land below Miami's Metrorail into a 10-mile linear park, urban trail and public art destination. Miami-Dade County is one of the primary funders of the development of the Underline. Friends of the Underline created a Tech Council to help leverage human-centered technology on The Underline to strengthen and bolster community equity, enhance the visitor experience and bridge the digital divide. The Tech Council is an external advisory board that meets quarterly to discuss technology goals at the Underline. You have served on the Tech Council, advising other members on strategy and ways they can align the work they are trying to do with what other organizations in the community are working on. You are not compensated for your work on the Tech Council.

The Nature Conservancy is a national non-profit environmental organization working to protect ecosystems, species, and natural resources nationally and around the world. The Nature Conservancy has a local Miami branch including the Miami Council, which you have also been asked to sit on. This is a more informal group than the Underline's Tech Council. The Miami Council meets irregularly to give local staff feedback on projects the Miami branch is considering. You are not compensated for your work on the Miami Council.

Analysis:

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") provides that no person who is considered a County employee "shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties." *See* County Ethics Code § 2-11.1(j). 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.

Generally, uncompensated outside employment for a traditional nonprofit entity is not considered outside employment. *Id.*; INQ 23-117; INQ 13-236. However, a County employee who has "significant managerial responsibilities or working time commitments" with a nonprofit entity could be considered to be engaging in outside employment. *Id.* Multiple factors are considered when determining whether service with a non-profit is considered outside employment, including: (a) whether the person founded the non-profit; (b) whether the person serves as the non-profit's Executive Director or President, or in some other office; (c) whether the person is responsible for the non-profit's day-to-day functioning or activities; (d) whether the person receives any form of compensation for his or her service to the non-profit; and, (e) whether the person has significant time

commitments as part of his or her service to the non-profit. *See* INQ 22-44; *see also* RQO 17-03.

However, certain work for nonprofits may not be considered outside employment for an entirely different reason—because it falls within the County employee’s job duties.

For example, the Program Director for the County’s Lesbian Gay Bisexual Transgender Queer (“LGBTQ”) Advisory Board, could serve on a city board devoted to work in the same community that the County advisory board served because the city board service was not outside employment, but was instead part of his County duties. *See* INQ 22-164. Similarly, a County employee in the Office of Elevator Safety may concurrently serve as a voluntary, non-paid Board Member on the Board of Directors of the National Association of Elevator Safety Authorities International (“NAESAI”) because his participation as an NAESAI Board Member is not outside employment as that term is used in the County Ethics Code. *See* INQ 13-236.

Here, when it comes to your participation on the Tech Council of Friends of the Underline and the Miami Council of the local chapter of The Nature Conservancy, the County Ethics Code Section 2.11-1(j) would not apply because your involvement would not be considered outside employment. Rather, if your participation in both Councils will occur in your County role and as a part of your County duties.

However, if your participation in either council will occur outside of your County employment—outside of your County work hours, for example—service on both councils appears to be most akin to voluntary service as a member of a board or committee for a nonprofit. Both The Nature Conservancy and the Friends of the Underline are nonprofit organizations, though both partnered with County agencies. *See* RQO 17-03; INQ 22-164; INQ 13-236.

As such, applying the multi-factor test to determine whether nonprofit service is considered outside employment, the factors here weigh against concluding that your service with the two councils is outside employment because: (a) you did not found the Friends of the Underline Tech Council or The Nature Conservancy’s Miami Council; (b) you will not serve as the executive director or president of either organization; (c) you will not be responsible for day-to-day operations of either organization; (d) you will not be compensated by either organization; and (e) your time commitment to both groups is not so great that it would signify work that is normally compensated.

Accordingly, considering all the of facts and circumstances discussed above, your participation in the Friends of the Underline Tech Council and The Nature Conservancy’s Miami Council, when it will be either within or outside of your County duties, would not be considered outside employment and, as such, **County Ethics Code Section 2-11.1(j) would not apply.**

There are, however, other provisions of the County Ethics Code which may be implicated by your service, discussed below:

A. Section 2-11.1(m) – Certain Appearances and Payment Prohibited

The County Ethics Code provides that no County employee, “shall appear before any County board or agency and make a presentation on behalf of a third person with respect to any . . . benefit sought by the third person.” County Ethics Code § 2-11.1(m)(1). The County Ethics Code further provides that no County employee shall, “receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person.” *Id.*

Here, you are prohibited from appearing and/or lobbying before the Board of County Commissioners and/or County staff on behalf of The Nature Conservancy’s Miami Council or the Tech Council of Friends of the Underline. *See* County Ethics Code § 2-11.1(m)(1).

B. Section 2-11.1(g) – Exploitation of Official Position Prohibited

The County Ethics Code provides that no County employee, “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others,” unless expressly permitted by ordinance. County Ethics Code § 2-11.1(g).

Here, you are prohibited from using your position as Resilience Coordinator for RER to secure any special privileges or exemptions for yourself and/or for the Friends of the Underline Tech Council or The Nature Conservancy’s Miami Council. *See id.*; INQ 21-13 (prohibiting a CITT Board Member from using her office to secure any special privileges or exemptions for EBC, the non-profit organization on which she concurrently served as Vice-President). This means that you may not provide an advantage to the Friends of the Underline Tech Council or The Nature Conservancy’s Miami Council through your County position.

Opinion

Based on the facts presented here and discussed above, the County Ethics Code does not prohibit you from serving on the Friends of the Underline Tech Council or The Nature Conservancy’s Miami Council, because that participation is part of your county duties and therefore not considered outside employment. *See* County Ethics Code § 2-11.1(j); RQO 17-03; INQ 22-164; INQ 13-236.

However, you are required to abide by the restrictions discussed above. *See* County Ethics Code §§ 2.11-1(g), (m)(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 the Mayor's Office or the BCC or under state law. Questions regarding possible conflicts based on mayoral or BCC directives should be directed to the Mayor's Office or the County Attorney'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 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.