



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Albert Eusebio, Eligibility Interviewer
Miami-Dade Community Action and Human Services Department

Helen Miguel, Center Director
Miami-Dade Community Action and Human Services Department

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

SUBJECT: INQ 2023-128, Section 2-11.1(j) and (k), Conflicting employment prohibited

DATE: September 26, 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 clerk for Tryfacta, a County contractor.

Facts

You are employed by the Miami-Dade Community Action and Human Services Department (“CAHSD”) as an Eligibility Interviewer for the Low-Income Home Energy Assistance Program¹ (“LIHEAP”). Your job at CAHSD was recently elevated to a full-time position. Your primary job duties involve screening and processing customer applications to LIHEAP for help with their Florida Power and Light bills. You also occasionally attend community events where you provide attendees with information about LIHEAP. Additionally, your supervisor, Helen Miguel, advised that you have been called upon during emergencies outside of your normal County hours.

You are seeking approval to engage in outside employment as a clerk for Tryfacta, a Miami-Dade County contractor which provides staffing for senior housing facilities owned by Miami-Dade

¹ The Low-Income Home Energy Assistance Program (LIHEAP) is a federally funded program that helps low-income households pay for cooling or heating their homes. Miami-Dade County uses LIHEAP to help qualified residents pay their energy bill and offer additional help in cases of energy crisis.

Public Housing and Community Development Department. You work for Tryfacta in the evenings and on weekends, when you are not working for CAHSD, and Tryfacta is aware that CAHSD may need you to work during emergencies. Your duties for Tryfacta involve helping seniors who live at the Haley Sofge Towers with information about events at the facility and other information Tryfacta instructs you to provide.

Your County job duties do not include any oversight or authority over County vendors or contracts and you are not in a position in your County employment to solicit customers for your outside employer. You advise that your County duties at CAHSD and your responsibilities in your outside employment do not involve use of the same databases and you would not use any County resources in your outside employment.

You advise that in general you do not have contact with the same people or programs at your County employment and your outside employment, though you noted that the seniors at the facility where you work may have an occasion to apply for LIHEAP. Based on the geographic divisions at CAHSD, they would generally be assisted at a different service center from the one where you work. You also advise that you may come in contact with County personnel such as the Police or Fire departments should an emergency situation arise with a resident.

Ms. Miguel does not see any conflict with your outside employment and your duties at CAHSD.

Issue

Whether any prohibited conflict of interest may exist between your employment at CAHSD and your proposed outside employment as a clerk for Tryfacta, a County contractor.

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 Home Care Aide at CAHSD did not have a conflict of interest in her outside employment at a private nursing home 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 20-88. The Commission also found that a security officer at Jackson Health Systems did not have a conflict of interest in his outside employment as a security guard with a Miami-Dade County contractor that did not contract with his County employer because there was no overlap between his public and private roles and he had no authority or oversight over or input into his private employer's contract with Miami-Dade County. *See* INQ 2023-105.

Here, based on the information provided to us, **it appears unlikely that the type of outside employment you are seeking to engage in would impair your independence of judgment as an eligibility interviewer at CAHSD.** Importantly, 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 and the client base of the senior center is different from the residents you generally encounter in your County job. 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 CAHSD, 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 clerk with Tryfacta.

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 Tryfacta:

- 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 Tryfacta or its clients. *See* County Ethics Code 2-11.1(g). *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 Tryfacta **or its clients**. *See* County Ethics Code Section 2-11.1(h).
- You may not represent Tryfacta **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 Tryfacta clerk, it is important to note that you would be prohibited from doing any such activities.
- 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 CAHSD or under state law. Questions regarding possible conflicts based on CAHSD directives should be directed to CAHSD 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/>.

² 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.