



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Marilyn Davis, Field Technician
Port of Miami

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

SUBJECT: INQ 2023-130, 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 employment by the Federal Emergency Management Agency (“FEMA”) as a reservist.

Facts

You are employed by the Port of Miami (“Port”) as a field technician. Your job duties include conducting inspections of construction sites at the Port and attending meetings regarding construction ongoing projects at the Port. You intend to apply to become a FEMA reservist, a position which will pay you when you are called up during an emergency. When you are called up as a FEMA reservist, you will work at nationally-declared disasters, assisting affected residents and training other reservists in disaster response.

Issue

Whether your proposed employment as a reservist with FEMA qualifies as outside employment for which you must obtain permission from your supervisor and from which you must disclose your income.

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. Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7-1.

However, the Ethics Commission has previously found that service in the United States Armed Forces Reserves is not considered outside employment under Section 2-11.1(k) of the Miami-Dade Ethics Code. *See* RQO 14-03. Specifically, the Commission held that "because reserve or active military service cannot be denied by a public employer, it should not be considered outside employment." *Id.* The opinion went on to note that state and federal law and opinions from the Florida Attorney General all treat military service by government employees outside the context of outside employment. *See id.*; *see also* Fla. Stat. 115.07(1) and (2); 38 USC § 4301 et seq.; Fla. A.G.O. 94-09; Fla. A.G.O. 2005-43 (noting that "the provisions of 38 U.S.C. 4301 et seq. supersede any state or local law or policy that reduces, limits, or eliminates any right or benefit provided by the chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.").

The Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) was amended in 2022 to require that the protections afforded military reservists be extended to FEMA reservists. 42 USC § 5149(d)(1).¹ Therefore, your employment as a FEMA reservist is not considered outside employment.

Opinion

Based on the facts presented here and discussed above, you are not required under Section 2-11.1 (k) to file an outside employment statement for your work as a FEMA Reservist because such work is not outside employment as the County may not deny you permission to engage in it. *See* RQO 14-03; *see also* INQ 17-257; INQ 17-127.

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 Port or under state law. Questions regarding possible conflicts based on Port directives should be directed to the Port director 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 For more information on the Civilian Reservist Emergency Workforce (CREW) Act as it amends USERRA, see FEMA guidelines published here: <https://www.fema.gov/fact-sheet/employment-and-reemployment-protections-reservists-faqs> (accessed on September 21, 2023).

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.