



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Gustavo Leal  
Senior Section Chief, Aviation Section  
Miami Dade County Aviation Department

**FROM:** Etta Akoni  
Staff Attorney  
Miami Dade County Commission on Ethics and Public Trust

**SUBJECT:** INQ 2023 - 148 Section 2-11.1 (k) Prohibition on Outside Employment,  
Section 2-11.1 (j) Conflicting Outside Employment Prohibited

**DATE:** November 6, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest which may occur as a result of your proposed role as President of the American Association of Columbian Engineers.

**FACTS:**

You, Mr. Gustavo Leal, are the Senior Section Chief of the Aviation Section of the Miami-Dade County Aviation Department (“Aviation”). This is an advanced professional administrative position that requires you to manage the development and implementation of the environmental rehabilitation programs to support Aviation. As such you are responsible for the day-to-day operations of the Airport Environmental Engineering Section. This includes managing the implementation of various agreements orders and programs related to environmental matters associated with Aviation; serving as the primary contact for environmental regulatory agencies for the Airport Environmental Engineering Section; supervising of the division sections of professional engineers, project managers, and paraprofessionals who direct the application of manpower, equipment, and materials necessary to recommend and carry out departmental policy related to the management of environmental engineering programs and projects. As a part of your position, you indicate that you are a part of selection committees for some Aviation procurement processes, but only when the Aviation Director’s / Assistant Director’s appoints you to serve as such. You

have also been approved to engage in outside employment as the manager of four (4) rental properties, located within Miami Dade and Monroe counties, which are owned by you.

You are a member of the American Association of Columbian Engineers (“AACE”). The AACE is a Florida Not for Profit 501(c)(6) corporation founded in 2000 by its then executive board, which you were not apart of. The mission of AACE is to promote the union among Colombian Engineers to work in common causes for the benefit of the society, the engineering profession, and the Association; and to promote the scientific, cultural, and technological exchange at the professional level among engineers working in the private sector, government agencies, and educational institutions from the United States and Colombia. *See* American Association of Columbian Engineers Bylaws. The goals of the AACE are to pursue the integration of [its] members to increase professional and educational growth, develop and improve communication between [its] members and their organizations, provide recognition for individuals with successful professional and educational accomplishments, support community leaders on the improvement of regulations related to the engineering profession, encourage participation of [its] members in community events, and develop and implement action plans each year to accomplish the Association goals. *See* American Association of Columbian Engineers Bylaws.

You are interested in running for the position of president of AACE. The role of president comes with a four (4) year term. As president you will be the principal officer of the Association and shall: (a) Preside at the meetings of the Board of Directors, officers, and of the Association; (b) Appoint Special Committee Chairs and Members to all Committees as needed subject to the approval of the majority of the officers; (c) Fill vacancies in elected or appointed offices, subject to the approval of the majority of the officers; (d) Be a member ex-officio, without vote, on all committees; (e) Cause to be sent to each Board of Directors member the written call for all Board and Association meetings prior to the meeting; (f) Approve all disbursements of funds from the Association before such disbursements are made by the Treasurer. The President shall be authorized to countersign checks; (g) At the discretion and at the direction of the incoming President, be responsible for the completion of unfinished business through January 31 following their term of office; (h) Keep the Vice President inform of all Association activities; (i) Determine the location of the Board Meetings with the approval of the majority of the Board Members; and (j) Deliver to the incoming President all files, papers and other property belonging to the Association immediately upon retiring from office. *See* American Association of Columbian Engineers Bylaws. The Board of Directors is composed of the Officers (the President, a Vice President, a Treasurer and a Secretary), the Immediate Past President, and the current committee chairpersons as have been appointed by the President and approved by the officers. *Id.* The Board of Directors are responsible for the supervision, control and direction of the Association. *Id.* You indicate that your anticipated time commitment for the position of President is approximately two (2) hours per week.

You indicate that AACE does not currently hold and does not have plans to pursue any contracts with Miami Dade County. AACE does not rent space from Miami Dade County. While AACE encourages the development and achievement of its individual members, you indicate that AACE does not provide assistance or mentoring to individual members who wish to pursue contracts with Miami Dade County individually or through a company.

## **ISSUES:**

Whether your prospective service as president of the American Association of Columbian Engineers would qualify as outside employment. Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would impact your ability to serve as the president of the American Association of Columbian Engineers while continuing your County employment with the Miami Dade County Aviation Department.

## **ANALYSIS:**

The County Ethics Code provides that, “[a]ll full-time County and municipal employees engaged in any outside employment . . . shall file, under oath, an annual report indicating the source of the outside employment . . . .” County Ethics Code § 2-11.1(k)(2). 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.” INQ 22-44 quoting RQO 17-03. Generally, uncompensated outside employment for a traditional nonprofit entity is not considered outside employment. *Id.* 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.

The Commission on Ethics has opined that serving as the Executive Director, President or Manager of a nonprofit on a compensated or uncompensated basis, when actively involved in the administration of that entity may constitute outside employment. *See* INQ 20-119 (citing RQO 17-03); *See also* INQ 22-44 (a County employee’s volunteer activities as Treasurer for Wish Foundation, Inc., a not-for-profit entity, did not constitute outside employment under the County Ethics Code because she did not found Wish Foundation, Inc.; she is not responsible for Wish Foundation, Inc.’s day-to-day functioning or activities; she does not receive any form of compensation for her service as Treasurer to the organization; and she does not have significant time commitments as part of her service as the organization’s Treasurer.) *See Also* INQ 22-83 ( a County employee’s role as President of the Richmond-Perrine Optimist Club, a not-for-profit entity, did not constitute outside employment under the County Ethics Code because: he did not found the organization; he does not have a significant managerial role in the organization; the organization has a separate executive director responsible for its day-to-day operations; he serves on a volunteer basis with no monetary compensation; and, he does not have significant time

commitments as part of his service as President beyond attending a monthly board meeting.)

In this case, AACE is a not-for-profit organization that you were not a part of founding. While you are interested in pursuing the role of president, the day-to-day responsibilities of the organization do not fall exclusively to you but upon the board of directors. Moreover, you would not receive compensation for your possible role as president of AACE. Lastly, your weekly time commitment to the organization would not be significant.

**OPINION:**

Based on the facts presented here and discussed above, you would not be engaged in outside employment by serving as President for American Association of Columbian Engineers, and you would not have to annually report your activities as outside employment as required by Section 2-11.1(k)(2) of the County Ethics Code. Because your proposed service as President for American Association of Columbian Engineers, is not outside employment, you do not have to seek approval from your supervisor on a yearly basis to engage in this activity. *See* Miami-Dade Code § 2-11; *see also* RQO 17-03; INQ 21-100. Likewise, your proposed service as President would not raise any issue concerning the prohibition against conflicting employment under County Ethics Code § 2-11.1(j).

Nevertheless, you must adhere to the following sections of the County Ethics Code:

- You may not appear before any County board or agency to make a presentation on behalf of or seek any benefit for American Association of Columbian Engineers. *See* County Ethics Code § 2-11.1(m)(1).
- You may not exploit your County position to secure special privileges or exemptions for yourself, American Association of Columbian Engineers, and/or any of its members. *See* County Ethics Code § 2-11.1(g).
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment and/or position to derive a personal benefit, or for the benefit of American Association of Columbian Engineers or any of its members. *See* County Ethics Code § 2-11.1(h).
- Notably, while it does not appear that fundraising would be a part of your duties as President for American Association of Columbian Engineers, it is important that you are aware of the following provision. With respect to fundraising on behalf of American Association of Columbian Engineers, the County Ethics Code prohibits County employees from soliciting any gifts in exchange for an official action. *See* County Ethics Code § 2-11.1(e)(3). This means that you may not solicit or accept a gift on behalf of American Association of Columbian Engineers in exchange for any official action you may take. However, in general the solicitation of gifts on behalf of a nonprofit organization is not prohibited, particularly where, as here, the County employee is not compensated by the non-profit. *See* INQ 16-93. Nevertheless, you must avoid direct, targeted solicitations of County vendors and lobbyists on behalf of American Association of Columbian Engineers

in order to avoid situations where the County vendor or contractor may perceive its agreement to a request for a contribution as in exchange for its continued business relationship with the County. *See* INQ 22-43; INQ 16-275.

- American Association of Columbian Engineers may enter into a contract/grant with Miami Dade County to receive funding, however, you may not participate in determining the grant/contract requirements or in awarding a grant/contract involving American Association of Columbian Engineers. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the grant/contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance involving American Association of Columbian Engineers. Finally, you may not work in any County department that would enforce, oversee or administer a grant/contract involving American Association of Columbian Engineers. *See* County Ethics Code § 2-11.1 (c) and (n). Consequently, American Association of Columbian Engineers **may not** enter contracts with Miami-Dade County Aviation Department.

This opinion is limited to the facts as you presented them to the Miami-Dade Commission on Ethics and Public Trust 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, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 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.