



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Valentina Caccia
Environmental Resources Project Supervisor
Water Resources Section
Environmental Resources Management Division
Miami Dade County Department of Regulatory and Economic Resources

Jennifer Walker, Chief
Human Resources, Safety and Training
Administrative Services Division
Miami-Dade County Department of Regulatory & Economic Resources

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

SUBJECT: INQ 2023 - 151 Section 2-11.1 (k) Prohibition on Outside Employment,
Section 2-11.1 (j) Conflicting Outside Employment Prohibited

DATE: November 14, 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 which may occur as a result of your proposed role as an expert member of the Decade Advisory Board to the Secretariat and Governing Bodies of the Intergovernmental Oceanographic Commission of the United Nations Educational Scientific and Cultural Organization (the “Decade Advisory Board”).

FACTS:

You, Ms. Valentina Caccia, are the Environmental Resources Project Supervisor of the Water Resources Section in the Environmental Resources Management Division of the Miami Dade County Regulatory and Economic Resources Department (“RER”). In this role you are responsible for developing and/or enhancing water quality and biological resource monitoring programs; managing water resource protection, restoration and

conservation projects, including coordination with multidisciplinary teams across RER and other County Departments and agencies; collecting specific project information; maintaining project budgets; maintaining project timelines, ensuring adherence with regulations standards and procedures, and ensuring the successful completion of projects; following up, reviewing, and evaluating results from said projects to document success of the activities; overseeing contracting mechanisms to fund water resources protection projects and water quality monitoring investigations and studies; identifying environmental conservation, restoration and preservation funding opportunities and writing funding grant applications and agreements; supervising subordinates in a manner conducive to full performance and high morale, providing training and professional development where necessary or appropriate; making recommendations regarding hiring, discipline, and promotion of subordinates, evaluating and rating employee performance, authorizing leaves requests; participation in agency and interagency meetings, and coordination with other local, state, and federal agencies as well as non-governmental organizations; engage with the public about the Division's work and makes technical or scientific concepts comprehensible to individuals with various backgrounds; conduct water quality investigations, manage and analyze data and produce high-quality written reports summarizing results; and prepare reports summarizing program performance.

The Decade Advisory Board was established as a technical advisory body to the Secretariat and Governing Bodies of the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational Scientific and Cultural Organization (“UNESCO”), a specialized agency of the United Nations. *See* IOC Circular Letter No 2957, Dated August 23, 2023. The Decade Advisory Board is responsible for providing direct advice to the IOC Executive Secretary on the implementation of the UN Decade of Ocean Science for Sustainable Development (‘the Ocean Decade’) over its ten-year implementation phase (2021–2030) with a focus on the endorsement of Decade Actions and scoping of Calls for Decade Actions, and reports to IOC Governing Bodies on strategic matters related to implementation of the Ocean Decade. *Id.* Specifically, and in accordance with the Ocean Decade Implementation Plan, the Decade Advisory Board is responsible for: reviewing and making recommendations to the IOC Executive Secretary on the endorsement of Decade programs; advising the IOC Executive Secretary on the scope of Calls for Actions under the Decade to support the mobilization of proponents worldwide; reviewing the regular resource needs assessments prepared by the Decade Coordination Unit and recommending approaches for resource mobilization and support outreach efforts to potential funders, including Member States, multilateral development banks, climate financing mechanisms, philanthropic foundations, and the private sector in order to help create the enabling environment needed to achieve the ambitions of the Decade; advising on the engagement and outreach strategy of the Decade in order to help catalyze high-level interest and engagement among key stakeholders, including leaders from Member States, UN Agencies, business, civil society and academia to ensure that the scientific outputs of the

Decade support the successful achievement of the UN Sustainable Development Goals; advising on the regular reviews to be undertaken subject to decision by IOC Governing Bodies, during the implementation phase, including reviewing of the scientific objectives and orientations of the Implementation Plan, annual progress reports, and the mid-term and final reviews, and making recommendations on the results of such reviews, as requested; advising on the engagement of relevant communities regarding contributions to the objectives of the Decade, with priority given to engaging early career ocean professionals and disadvantaged groups and regions and to the science-policy interface; monitoring the progress and review the outputs of any working groups established by the IOC Secretariat related to structural and cross-cutting operational elements of the Decade Implementation Plan; providing information to the IOC Executive Secretary to enable his reporting to the IOC Governing Bodies; and reporting as needed to the Governing Bodies in relation to strategic issues. *Id.*

On August 23, 2023, the IOC issued a call for nominations for new expert members for the Decades Advisory Board. *Id.* You are interested in being an expert member for the Decades Advisory Board and have nominated yourself for the position. The Decade Advisory Board meets four (4) times per year, with at least one (1) in presentia meeting annually when possible. Additional in-person or virtual meetings will be held as necessary. *Id.* Decade Advisory Board members do not represent their institutions or countries and should be able to commit sufficient time to the work of the Decade Advisory Board. *Id.* You indicate that anticipate you will spend two (2) hours per week, during your personal time and on weekends working for the Decade Advisory Board. You indicate that there is no compensation for the role of expert member for the Decades Advisory Board. This includes no salary, no stipends, no travel expenses, no per diem, etc.

ISSUES:

Whether your prospective service as an expert member of the UNESCO IOC Decade Advisory Board qualifies as outside employment. If said role is considered 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 an expert member of the UNESCO IOC Decade Advisory Board while continuing your County employment with the Miami Dade County Regulatory and Economic Resources Department.

ANALYSIS:

The County Ethics Code provides that 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.” *See* INQ 22-44 (quoting RQO 17-03). Generally, uncompensated outside employment for a

traditional nonprofit entity is not considered outside employment. *Id.* Moreover, volunteer work that is not compensated for is not considered outside employment. *See* INQ 09-84, INQ 14-148, INQ 15-138, and INQ 18-226.

Multiple factors are considered when determining whether service with a non-profit organization is considered outside employment, including: (a) whether the person founded the non-profit; (b) whether the person serves as the 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.

In prior Commission on Ethics opinions, serving as a volunteer for a nonprofit, governmental, or governmental related organization in a limited role did not constitute outside employment. *See* INQ 21-145 (a Consumer Protection Enforcement Supervisor in the County's RER department volunteered his service as an Auxiliary Florida Highway Patrol State Trooper for a minimum of 8 hours a month of patrol completed on during non-county work hours was not outside employment) *See also* INQ 18-226 (a County employee's volunteer service for GSAF/OPEIU, Local 100 AFL-CIO union promoting union membership at meetings, handing out union leaflets, and reaching out to prospective members via private email in the evenings and on Saturdays was not outside employment.); *See also* INQ 09-84 (Outside employment does not encompass unpaid volunteering on behalf of a union or charitable organizations). *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.)

In this case, UNESCO IOC Decade Advisory Board is a not-for-profit intergovernmental organization that you were not a part of founding. While you are interested in pursuing the role of expert member, the day-to-day responsibilities of the organization would not include you nor your prospective role of expert member. Moreover, you will not receive compensation for your possible role as expert member for the UNESCO IOC Decade Advisory Board. 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 an expert member of the UNESCO IOC Decade Advisory Board, 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 an expert member of the UNESCO IOC Decade Advisory Board, 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 an expert member of the UNESCO IOC Decade Advisory Board 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 the UNESCO IOC Decade Advisory Board. *See* County Ethics Code § 2-11.1(m)(1).
- You may not exploit your County position to secure special privileges or exemptions for yourself, UNESCO IOC Decade Advisory Board, 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 the UNESCO IOC Decade Advisory Board 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 an expert member for the UNESCO IOC Decade Advisory Board, it is important that you are aware of the following provision. With respect to fundraising on behalf of the UNESCO IOC Decade Advisory Board, 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 the UNESCO IOC Decade Advisory Board 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 the UNESCO IOC Decade Advisory Board 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.

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