



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Lance Thomas, Stewardship Manager
Miami-Dade County Parks, Recreation and Open Spaces Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-153, Section 2-11.1(g), Exploitation of official position prohibited; Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(v), Voting Conflicts.

DATE: November 17, 2023

CC: All COE Legal Staff; Alton Sears, Special Projects Administrator 2, Miami-Dade Community Action and Human Services Department

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible ethics issues arising from your County employment and your service on a County advisory board.

Facts

You are currently employed by the Miami-Dade County Parks, Recreation and Open Spaces Department (“PROS”) as a Stewardship Manager. You primarily work at Wilbur B. Bell Park and your responsibilities include overseeing all park operations, handling park and field rental reservations, as well as managing all special events held at the park.

You advised that you have been appointed to the Perrine Community Advisory Committee (“CAC”) as a Board Member. The Miami-Dade Community Action and Human Services Department (“CAHSD”) administers and supports the sixteen (16) CACS that exist in the County.¹ The CACs foster civic engagement by giving community members of designated low-income or disadvantaged areas an opportunity to identify community needs, and then develop and implement

¹ See *Community Advisory Committees*, <https://www.miamidade.gov/global/government/committees/community-advisory-committees.page> (last visited Oct. 27, 2023).

those plans to address the identified needs.² CAC members are elected by fellow community stakeholders, and they serve in an advisory capacity to CAHSD.³

CAHSD Special Projects Administrator 2, Mr. Alton Sears, the CAHSD liaison for the CACs, advised that the Perrine CAC meets on a monthly basis. As to funding requests, he advised that the only occasion when the Perrine CAC may be asked to vote on any matter related to funding would be whether the Perrine CAC wanted to endorse or otherwise support a grant application made to a third party. He advised that this most often arose in relation to grant applications related to a Request for Application issued by the Miami-Dade County Public Housing and Community Development Department (“PHCD”) because certain monies provided by the United States Department of Housing and Urban development require that applicants present their grant applications before certain community entities, like the Perrine CAC. However, he also acknowledged that there have been rare occasions when either grants related to PROS endeavors, or grants that PROS is seeking from other entities, have been presented before the CACs.

Furthermore, you advised that your PROS supervisor appears at Perrine CAC meetings and answers questions related to the PROS facilities in the Perrine CAC’s target area. Mr. Sears elaborated that the CACs encourage PROS to send its park managers to CAC meetings in order to advise the CAC Board Members and other community stakeholders and members of the public who attend the meetings about ongoing PROS projects in the target areas, as well as future PROS events and initiatives. Both you and Mr. Sears affirmed that the Perrine CAC does not have any supervisory authority over PROS generally and Wilbur B. Bell Park specifically.

Finally, you advised that your duties and responsibilities as a Board Member of the Perrine CAC only occur outside of your regular work hours with the exception of one monthly meeting held on the second Monday of every month. You advised that you do not typically come into contact with the same or similar individuals or entities in your services as a Perrine CAC Board Member as you do in your PROS employment, except in the limited circumstances discussed above. You advised that you do not use the same or similar resources as a Board Member of the Perrine CAC as you do in your PROS employment, nor do you have access to non-public information in your PROS employment that is or could be relevant to your Perrine CAC service.

Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would impact your ability to serve on the Perrine CAC while continuing your County employment with PROS.

² See *Community Advisory Committees - South*, <https://www.miamidade.gov/global/government/committees/community-advisory-committees-south.page> (last visited Oct. 27, 2023).

³ See *id.*

Analysis

As a preliminary matter, while there is no general prohibition against the appointment of a County employee to a County board, the Miami-Dade County Commission on Ethics and Public Trust (“Ethics Commission”) generally cautions against the practice of County board service by County employees because several provisions of the County Ethics Code are implicated with such service. *See* INQ 21-51. Furthermore, when a County employee is being considered for membership on a County Board, the Ethics Commission has recommended that it be consulted for an ethics opinion prior to the election or appointment. *See* INQ 21-51; INQ 16-03.

This inquiry involves multiple sections of the County Ethics Code, as discussed below:

A. Section 2-11.1(g) – Exploitation of official position prohibited

The County Ethics Code provides that no County advisory personnel or County employees “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted” County Ethics Code § 2-11.1(g). One of the primary rationales underlying County Ethics Code Section 2-11.1(g) is that a public officer or employee may not use his or her official position to secure the use of public resources for private use. *See* C18-22-05 (finding Chief of the Miami-Dade Fire Rescue Department (“MDFR”) exploited his official position by utilizing an MDFR boat to transport himself and his wife to and from the Miami Boat Show).

In practice, when a County employee is also serving on a County board, the County employee should use his or her leave time to attend any County board meetings that occur during his or her regularly scheduled work hours unless his or her supervisor determines “that service on the board is directly relevant to the work, goals and mission of the employing agency, such that it would be a justifiable expenditure of the agency’s resources to support such activity.” INQ 15-189 (addressing issues related to an employee of the Miami-Dade Juvenile Services Department serving on the Miami-Dade Economic Advocacy Trust).

Here, based on the information provided to us at this time, it does not appear that your service on the Perrine CAC is directly relevant to your work for PROS as a Stewardship Manager at Wilbur B. Bell Park because the Perrine CAC does not have any supervisory or advisory authority over PROS generally or Wilbur B. Bell Park specifically, and the only overlap between the two involves your supervisor attending Perrine CAC meetings to alert the Perrine CAC and local residents about ongoing and future PROS projects and events at PROS locations in the target area. Accordingly, you should use your leave time to attend any Perrine CAC meetings that occur during your regularly scheduled PROS work hours. *See* INQ 15-189. Furthermore, insofar as the Perrine CAC may consider matters related to PROS grant requests, you may not participate in the preparation of these grant requests, nor in the presentation to the Perrine CAC, in order to avoid any appearance that you are exploiting your position on the Perrine CAC to aid PROS. *See* County Ethics Code § 2-11.1(g); C18-22-05.

B. Section 2-11.1(j) – Conflicting employment prohibited

The County Ethics Code provides that no person who is considered a County employee and/or advisory personnel “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).⁴

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).

With regard to County employees serving on a County advisory board, an employee of CAHSD had a prohibited conflict of interest that prevented her from serving as a member of the Miami-Dade Domestic Violence Oversight Board (“DVOB”) because the DVOB’s advisory role to the BCC directly impacted CAHSD’s operations and funding due to CAHSD’s responsibilities related to management and oversight of domestic violence programs, shelter, and transitional housing operations. *See* INQ 21-51. In contrast, an employee of PROS could concurrently serve as a member of the Miami-Dade Citizens’ Independent Transportation Trust (“CITT”) without giving rise to a prohibited conflict of interest because there was no overlap in duties that appeared to affect her independence of judgment in either position. *See* INQ 21-13. Similarly, a PHCD employee could concurrently serve as a trustee of the Miami-Dade Affordable Housing Trust Fund Board (“AHTFB”) because his County work did not involve matters that would foreseeably come before the AHTFB. *See* INQ 18-67; *see also* INQ 16-03 (a County employee could serve on the Miami-Dade Commission on Disability Issues provided that said County employee abided by certain restrictions).

Here, based on the information provided to us at this time, it appears to be unlikely that your concurrent service on the Perrine CAC and employment as a Stewardship Manager with PROS would give rise to a prohibited conflict of interest because there is very limited overlap between your public duties and your outside employment: your service on the Perrine CAC will occur

⁴ By its terms, Section 2-11.1(j) of the County Ethics Code applies to “other employment.” However, outside employment is generally 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 (emphasis added). Nevertheless, historically, this agency has applied section 2-11.1(j) of the County Ethics Code to persons concurrently serving on a County advisory board and employed by the County. *See, e.g.*, INQ 21-51; INQ 21-13; INQ 18-67; INQ 16-03. Regardless, because Section 2-11.1(j) of the County Ethics Code would not prohibit you from concurrently serving on an advisory board, for the reasons discussed herein, this issue need not be resolved at this time.

Additionally, you are not required to file the annual Outside Employment Statement reporting your County employment as “outside employment” because the County Ethics Code only requires the filing of said annual statement from “full-time County and municipal employees engaged in outside employment for any person, firm, corporation or entity *other than* Miami-Dade County or the respective municipality” County Ethics Code § 2-11.1(k)(2) (emphasis added).

outside of your PROS work hours – provided you use your leave time as discussed above; you will not use the same resources in your employment with PROS as you will use in your board service on the Perrine CAC; you will not have access to non-public information as part of your Perrine CAC service that is, or could be, relevant to your employment with PROS and vice-versa; and neither the Perrine CAC nor PROS have authority over each other or otherwise have overlapping responsibilities. *See* RQO 17-01; INQ 21-13; INQ 16-03. Insofar as you encounter the same or similar people in both positions, it is through the attendance of your PROS supervisor at Perrine CAC meetings for the purpose of advising the Perrine CAC and members of the community in the target area of ongoing and future PROS projects. This limited informational contact does not impact your ability to fully and faithfully discharge your duties to the Perrine CAC and to PROS because the Perrine CAC has no authority over PROS and PROS has no authority over the Perrine CAC. Furthermore, the contact with your PROS supervisor at the Perrine CAC meetings is limited to providing information that furthers the stated missions of both the Perrine CAC and PROS.

Additionally, Mr. Sears stated that grant requests from PROS to third parties are rarely presented to the Perrine CAC, and that when they are, it is done merely to seek an endorsement from the Perrine CAC because the Perrine CAC does not have approval authority over such grant requests to third parties. Accordingly, this situation is distinguishable from the factual situation discussed above where the DVOB’s role directly impacted CAHSD and its funding; here, the Perrine CAC has no direct role in supervising PROS and, on the rare occasion when it is asked for a decision on whether to endorse a grant application PROS is submitting to a third party, you should consider whether you have a voting conflict, as discussed in the next section. *See* INQ 21-51; INQ 21-13.

C. Section 2-11.1(v) – Voting Conflicts

The County Ethics Code provides that no person who is considered County advisory personnel:

shall vote on any matter presented to an advisory board . . . on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

County Ethics Code § 2-11.1(v). Accordingly, for a voting conflict to exist under Section 2-11.1(v) of the County Ethics Code, both prongs must be met. *See* RQO 07-49; INQ 20-73.

In practice, a CAHSD employee serving on the DVOB would have a prohibited voting conflict were she to be asked to vote on CAHSD policy and funding matters that would directly affect her as a CAHSD employee. *See* INQ 21-51. Additionally, a member of the Miami-Dade Land Acquisition Selection Committee (“LASC”) who was an employee of the Tropical Audubon Society (“TAS”) had a prohibited voting conflict regarding a vote on recommending to the Miami-Dade Board of County Commissioners the acquisition of a parcel of land owned by TAS because he had an enumerated relationship with TAS and the sale of the land could directly impact TAS’s funding for his position. *See* INQ 20-74.

Here, on the rare occasion when a matter may come before the Perrine CAC that concerns a grant application by PROS to a third party, then you will have a prohibited voting conflict because you have an enumerated relationship with PROS, that of employee, and funding for PROS would likely impact the conditions of your PROS employment, thereby affecting you. *See* RQO 07-49; INQ 21-51; INQ 20-74. Thus, whenever you have a prohibited voting conflict as described above, you are required to publicly announce that you have a conflict of interest and the nature of your conflict of interest. *See* Fla. Stat. § 112.3143(3)(a). Furthermore, upon recusal, you must file a written disclosure regarding the nature of the conflict with the person responsible for recording the minutes of the meeting within fifteen (15) days after the vote. *See id.*

Opinion

Based on the facts presented here and discussed above, you may concurrently serve as a member of the Perrine Community Advisory Committee, administered by CAHSD, while also employed by PROS as a Stewardship Manager. Your employment as a Stewardship Manager for PROS concurrent with your service on the Perrine CAC would not give rise to a prohibited conflict of interest because the Perrine CAC has no authority over PROS and vice versa, provided that you take leave time to attend any Perrine CAC meetings that occur during your regularly scheduled work hours with PROS. *See* RQO 17-01; INQ 21-13; INQ 16-03. Furthermore, insofar as grant applications to third parties may come before the Perrine CAC for endorsement by the Perrine CAC, you would have a prohibited voting conflict of interest that would require you to recuse yourself from voting on that matter. *See* RQO 07-49; INQ 21-51; INQ 20-74.

In addition to the restrictions discussed above, the following sections of the County Ethics Code are worth review:

- You may not appear before the Perrine CAC to make a presentation on behalf of or seek any benefit for PROS. *See* County Ethics Code § 2-11.1(m)(1).
- 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. *See* County Ethics Code § 2-11.1(h).

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 PROS, CAHSD, or under state law. Questions regarding possible conflicts based on PROS or CAHSD directives should be directed to PROS and CAHSD respectively, or to 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/>.

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.