



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Orlando J. Lopez, Police Sergeant  
Miami-Dade County Police Department

**FROM:** Nolen Andrew Bunker, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2023-166, Section 2-11.1(g), Exploitation of official position prohibited.

**DATE:** December 28, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest based on your County employment, your service on a County board, and your candidacy for public office.

#### Facts

You are employed by the Miami-Dade County Police Department (“MDPD”) as a Police Sergeant. In that role you have a number of responsibilities. First, you are assigned to the Transit Squad. Second, you serve as MDPD’s Lesbian, Gay, Bisexual, Transgender, and Queer (“LGBTQ”) Liaison, and in that position, you are responsible for maintaining relationships with community leaders, ensuring departmental participation in community events, and assisting the department with any concerns regarding the LGBTQ community. Third, you are the project lead for the Departmental Interview Room Upgrade. Fourth, you serve on MDPD’s Appearance Standards Committee. Fifth, you will be MDPD’s representative to 2024 International Conference on Violence against Men and Boys.<sup>1</sup>

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<sup>1</sup> The 2024 International Conference on Violence against Men and Boys describes itself as “a groundbreaking educational and capacity-building event that seeks to address the often-overlooked issue of violence against men and boys,” that will focus on “reframing violence as a health issue.” *2024 International Conference on Violence Against Men and Boys*, available at <https://www.giantslayer.us/vamb24> (last visited Dec. 15, 2023).

You serve as the District 12 appointee to the Miami-Dade County Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual (“LGBTQIA+”) Advisory Board.<sup>2</sup> The LGBTQIA+ Advisory Board advises the Miami-Dade Board of County Commissioners (“BCC”) with respect to laws and policies regarding the LGBTQIA+ community in Miami-Dade County “to ensure a strong voice for the LGBTQIA+ community in local government and public policy and to encourage and support the development of the LGBTQIA+ community.”<sup>3</sup>

You have made it publicly known that you are a candidate<sup>4</sup> for the elected position of Sheriff of Miami-Dade County.<sup>5</sup> The qualifying period for the election for Sheriff of Miami-Dade County will be from noon on June 10, 2024, through noon on June 14, 2024.<sup>6</sup> Once you have filed the appropriate documents, you plan to actively engage in fundraising and campaigning, to include seeking endorsements for your candidacy for Sheriff of Miami-Dade County.

### Issue

Whether there is a prohibited conflict of interest regarding your County employment as an MDPD Sergeant, your service on the LGBTQIA+ Advisory Board, and your candidacy for Sheriff of Miami-Dade County.

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<sup>2</sup> As used in the County Ethics Code, “[t]he term ‘advisory personnel’ shall refer to the members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners.” County Ethics Code § 2-11.1(b)(4). Therefore, as a member of the LGBTQIA+ Advisory Board, you are considered “advisory personnel” in addition to being an “employee” as that term is defined by the County Ethics Code. *See* County Ethics Code § 2-11.1(b)(6).

<sup>3</sup> *See Mission, LGBTQIA+ ADVISORY BOARD*, <https://www.miamidade.gov/global/government/boards/lgbtqia-plus-advisory-board.page> (last visited Dec. 15, 2023).

<sup>4</sup> *See About Orlando Orly Lopez, ORLANDO ORLY LOPEZ FOR MIAMI-DADE COUNTY SHERIFF 2024*, <https://orlyforsheriff.com/> (last visited Dec. 15, 2023).

<sup>5</sup> In November 2018, the citizens of Florida amended Article VIII, Section 1(d) of the Florida Constitution to provide that the electors of each County must elect a sheriff, and that a County charter may not abolish the office of the sheriff. As a result, in Miami-Dade County, this amendment had the effect of restoring the office of sheriff, which had previously been abrogated by the County Charter, with the duties of that office transferred to the County Mayor and, by designation, to the Director of the Miami-Dade Police Department. *See* Memorandum dated June 7, 2021, re: Sheriff Transition and Police Services in the Unincorporated Municipal Service Area, <https://documents.miamidade.gov/opba/police-and-sheriff-transition.pdf> (last visited Dec. 15, 2023).

<sup>6</sup> *See Miami-Dade County 2024 County Sheriff Candidate Qualifying Information*, <https://www.miamidade.gov/elections/library/qualifying-handbook/sheriff.pdf> (last visited Dec. 15, 2023).

## Analysis

### *i. Prohibitions on Running for Public Office*

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) does not contain any provision that broadly prohibits a County official or employee from engaging in political activities outside of the workplace or from running for office. *See* INQ 23-28. However, while not within the jurisdiction of the Ethics Commission, you should be aware that there are provisions of State and local law that apply to County officials and employees who are seeking elected public office.

The provision of Florida law commonly known as “resign-to-run” places restrictions on elected and appointed municipal officers who are seeking election for a federal, state, or local office. *See* Fla. Stat. § 99.012(2). Specifically, “[a]n appointed district, county, or municipal officer<sup>7</sup> must submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.” Fla. Stat. § 99.012(3)(e)(2). However, the provisions of the “resign-to-run” law do not apply to “[p]ersons serving without salary as members of an appointive board or authority.” Fla. Stat. § 99.012(7)(b). Thus, it would appear that that section of the “resign-to-run” law would not apply to you because service on the LGBTQIA+ Advisory Board is without compensation.

Additionally, another section of the “resign-to-run” law applies to law enforcement officers and provides that:

A person who is a subordinate officer,<sup>8</sup> deputy sheriff, or police officer must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

Fla. Stat. § 99.012(5). However, this portion of the law does not appear to apply to you because the office of the Sheriff of Miami-Dade County is currently unoccupied.

In addition to the above-discussed State law, local law places the following limitations on County officials and employees:

Any appointed official or employee of Miami-Dade County who qualifies as a candidate for election to the office of Miami-Dade County Commissioner, Miami-Dade County Mayor, Miami-Dade County Clerk of the Circuit Court, or Miami-

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<sup>7</sup> The term “officer,” with respect to a municipality, is defined as “a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.” Fla. Stat. § 99.012(1)(a).

<sup>8</sup> The term “subordinate officer,” with respect to a municipality, is defined as “a person who has been delegated the authority to exercise municipal power by an officer.” Fla. Stat. § 99.012(1)(c).

Dade County Property Appraiser shall immediately take a leave of absence from his or her county position until the date of the election and shall, if elected, immediately forfeit his or her county position.

Miami-Dade County Charter § 1.05C. This provision of local law does not appear to apply to you because the position of Sheriff of Miami-Dade County is not among the enumerated positions requiring an immediate leave of absence. However, with regard to your service on the LGBTQIA+ Advisory Board, local law provides that:

No member of any County board shall become a candidate for elective political office during his or her term. Should any member of a County board qualify as a candidate for elective political office, such qualification shall be deemed a tender of resignation from such board. Any County board member who qualifies as a candidate shall immediately notify the County Commissioner who nominated or appointed the board member.

Miami-Dade County Code § 2-11.38(e)(iii). Thus, it appears that if you qualify as a candidate for Sheriff of Miami-Dade County, then you will be required to tender a resignation from the LGBTQIA+ Advisory Board and notify the County Commissioner for District 12 of your resignation. *See* INQ 16-206 (a member of the Miami-Dade Homeless Trust and the Miami-Dade Criminal Justice Council who qualified as a candidate for election to the City of Miami Overtown Community Oversight Board was deemed to have resigned her County advisory board positions).

Furthermore, with regard to your County employment, Miami-Dade County Administrative Order 7-2 provides that:

any employee of Miami-Dade County who qualifies as a candidate for election to any federal, state or municipal office shall immediately take a leave of absence from his or her County position until the date of the election and shall, if elected, immediately forfeit his or her County position. If the candidate is not elected, he or she shall immediately be reinstated to his or her former position.

In light of AO 7-2, it appears that, if you qualify as a candidate for Sheriff of Miami-Dade County, then you will be required to take a leave of absence from your County employment, meaning your position as a Police Sergeant with MDPD, until the date of the election. *See* INQ 17-157 (an employee of the Miami-Dade African Heritage Cultural Center running for a seat on the Miami-Dade School Board would have to take a leave of absence after qualifying). Furthermore, if you are elected as Sheriff of Miami-Dade County, it appears that you would immediately forfeit both your position as a Police Sergeant with MDPD and your appointed position as a member of the LGBTQIA+ Advisory Board. *See* Miami-Dade County Charter § 1.05B; *see also* INQ 18-215 (Corrections Officer will forfeit his County position if elected Mayor of the City of West Park in Broward County, Florida).

You are reminded that the Ethics Commission does not have authority to interpret the laws, charters, ordinances, and administrative orders discussed above. You are encouraged to contact the Florida Department of State, Division of Elections, for interpretations of Florida's election

laws. You are encouraged to contact the Miami-Dade County Attorney's Office for guidance regarding interpretations of Miami-Dade County ordinances and administrative orders.

*ii. Exploitation of Official Position Prohibited*

Section 2-11.1(g) of the County Ethics Code provides that no County advisory personnel or employee "shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others," unless expressly permitted by ordinance. In the context of political campaigns, this generally prohibits the use of public time and resources in support of any political purpose. *See* INQ 22-149; INQ 18-215; INQ 16-21.

This general restriction has been distilled into prohibited conduct in three areas, the first of which being the prohibition against engaging in politicking while on County time. As such, County advisory personnel and employees may not engage in activities in support of a political candidacy while engaged in their County work or use County time to further a political candidate. *See* INQ 18-232 (stating a County employee may not participate in political activities during their County workday); INQ 15-26 (stating that a County employee's political activities cannot be conducted while on duty); INQ 09-19 (noting that a County employee can work on a political campaign only while he or she is off duty).

Second, County advisory personnel and employees cannot use public resources for political purposes. As such, County employees may not wear their uniform while engaging in political campaigning. *See* INQ 09-19.<sup>9</sup> County advisory personnel and employees also may not use office stationery, telephones, computers, or public vehicles in furtherance of their political activity. *See* INQ 15-26 (a County employee may participate in a friend's political campaign, but she may not use the enumerated resources). It is also prohibited to use government resources to direct members of the public to a political candidate's campaign website or campaign contact information. *See* INQ 18-200 (a government social media website cannot redirect members of the public to a campaign website). Similarly, political e-mails, including fundraising requests, must not originate from County computers or e-mail accounts. *See* INQ 16-141. Public officials and employees may not use public resources to record and distribute videos depicting themselves where the videos have no clear public purpose or serve to significantly highlight the public official or employee over the underlying public purpose. *See* INQ 19-129 (finding the content of certain promotional videos created by the elected officials of the Town of Surfside contained content that strayed from a clear public purpose). With regard to title, it is generally permissible for a public official to use his or her official title in the context of political campaign activity so long as public resources are not used in connection therewith. *See* RQO 05-06 (finding that a member of the North Miami Beach City Council may use his official title in campaign stationary while campaigning for City Mayor); INQ 16-38 (finding that a County Commissioner may use her title when engaging in campaign activities on behalf of other political candidates).

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<sup>9</sup> However, the Florida Commission on Ethics has opined that a deputy sheriff may wear his uniform and associated equipment while campaigning where the policy of the Sheriff's Office did not prohibit wearing of said uniform and associated equipment while off-duty at campaign events and with the Sheriff's permission. *See* Fla. Comm'n on Ethics Op. 07-24.

Third, County advisory personnel and employees are prohibited from coercing or attempting to coerce their colleagues or members of the public to take a political position. *See* INQ 18-232 (a staff member for a County Commissioner hosting a fundraiser may not coerce or intimidate others to make contributions); INQ 17-49 (an employee of the Information Technology Department serving as Miami-Dade Democratic Executive Committee Representative may not use his County position to get colleagues to take political positions). As such, a County official may not use a public meeting of their commission or board to promote a particular candidate or political agenda. *See* INQ 18-114 (finding it a misuse of public resources if a City of South Miami Commissioner used or permitted another to use a public meeting for the purpose of political campaign speech or overt political advocacy by a particular candidate for public office); INQ 16-201 (a City of South Miami Commissioner may not promote a particular candidate from the dais).<sup>10</sup>

Applying these provisions to your candidacy, you must abide by each of the restrictions outlined above, meaning you must not use County time or County resources in furtherance of your campaign, and you may not coerce or attempt to coerce your colleagues or members of the public to support your campaign. Because your position involves significant public interaction and outreach on behalf of the County, you should be particularly diligent in avoiding discussing your political candidacy while serving on the LGBTQIA+ Advisory Board and while fulfilling your duties as a Police Sergeant and the MDPD LGBTQ Liaison. *See* INQ 23-28 (emphasizing the need for diligence in avoiding an appearance of impropriety by the MDPD Director while seeking public office). Furthermore, in order to avoid any appearance of coercion and in light of the unique confidence placed in law enforcement officers by the community, you should particularly avoid any overlap whatsoever between complainants, victims, subjects, or witnesses in any matter in which you may be involved as a police sergeant and your campaign activities. *See id.*

Additionally, you should conform your conduct to the limitations contained in the Ethics Memorandum regarding: Limitations on Political Activities of County and Municipal Officers and Employees.<sup>11</sup> *See* INQ 22-149.

Finally, while the Ethics Commission does not have jurisdiction to interpret State law, you should be aware that State law has a similar provision prohibiting the misuse of one's public position. *See* Fla. Stat. § 112.313(6).

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<sup>10</sup> Florida law, in a provision known as the “Little Hatch Act,” also provides that no County or municipal officer or employee shall “use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person’s vote or affecting the result thereof.” Fla. Stat. § 104.31(1)(a). The law further prohibits County or municipal officers or employees from coercing or attempting to coerce a fellow County or municipal officer or employee “to pay, lend, or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes.” Fla. Stat. § 104.31(1)(b).

<sup>11</sup> Available at: <https://documents.miamidade.gov/ethics/memos/political-activities.pdf>.

## Opinion

Based on the facts presented here and discussed above, there is no prohibited conflict of interest in the County Ethics Code that would prevent you from submitting your candidacy for the position of Sheriff of Miami-Dade County while concurrently employed as a Police Sergeant with MDPD and serving as a member of the LGBTQIA+ Advisory Board, provided that you abide by the restrictions discussed above. Specifically, you may not use any County time or resources in furtherance of your candidacy for Sheriff of Miami-Dade County. Furthermore, in light of your position as a law enforcement officer and the frequency with which you are called to interact with the public in your County employment and service on a County advisory board, you must be very diligent in avoiding any appearance of coercion regarding your campaigning and separate your County service from your campaigning. *See* INQ 23-28.

**However, if you ultimately qualify as a candidate for Sheriff of Miami-Dade County, then it appears that, pursuant to County ordinance, you will be deemed to have resigned from your position on the LGBTQIA+ Advisory Board. *See* Miami-Dade County Code § 2-11.38(e)(iii). Furthermore, it appears that you will have to take a leave of absence from your County employment as a Police Sergeant with MDPD if you qualify as a candidate for Sheriff. *See* Miami-Dade County AO 7-2.**

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.

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.