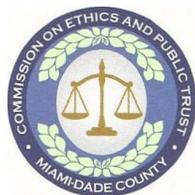


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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December 29, 2023

Via Electronic Mail to

Expedite Delivery: Sonia.Grice@miamidade.gov

Ms. Sonia Grice, Director
Community Action and Human Services Department
701 Northwest 1st Court, 10th Floor
Miami, Florida 33136

Re: INQ 2023-171, Section 2-11.1(j), Outside Employment
Greater Miami Service Corps, Inc.

Dear Ms. Grice:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting guidance regarding the application of the County Ethics Code's outside employment provision, Section 2-11.1(j). Miami-Dade Code.

Introduction:

The requester is Sonia Grice, the Director of the Community Action and Human Services Department (CAHSD). CAHSD provides comprehensive social services to individuals and families. Services are designed and coordinated to address and relieve hardships associated with poverty. One of the department's major goals is to ensure that all individuals 18 years and older, including foster care and juvenile youths, are work ready.

Deborah Dorsett is a Division Director in the Community Action and Human Services Department. She explains that her County job responsibility is essentially to run the Greater Miami Service Corps, Inc., a Florida nonprofit entity (GMSC). She maintains that the GMSC is a division of CAHSD. Ms. Dorsett serves as the GMSC's Executive Director.

Deborah Dorsett started as a County employee in 1994. In 1997 she interviewed and was selected for the advertised County position of GMSC Education Training Coordinator. In 2004 she was selected or designated the GMSC Acting Executive Director by the Director of the Community Action Agency (CAA), the predecessor agency that subsequently became CAHSD.

Thereafter, in 2005, she was selected as the GMSC Executive Director, again by the CAA Director. She has served in the dual role of County employee and nonprofit executive director since that time.

As Ms. Grice is charged by County ordinance with approving outside employment by employees in her department, she seeks guidance regarding the application of the County Ethics Code to Ms. Dorsett's engagement with GMSC.¹

Background:

In 1989, the Board of County Commissioners (BCC) authorized the establishment of a Community Action Youth Corps (CAAYC) under the Community Action Agency (CAA), a predecessor to CAHSD, and authorized the County to apply for, receive, and expend Urban Coups Expansion Project Funds. (Resolution No. R-1046-89)

In 1990, CAAYC was chartered as the GMSC, a Florida nonprofit corporation. This allowed GMSC to secure funding from private nonprofit foundations.

Subsequently, in 1993, the BCC retroactively approved a cooperative agreement (CA) between CAA and GMSC whereby the County through CAA would provide GMSC administrative, personnel, and fiscal services, including procurement, and accounting assistance. As consideration, GMSC would pay the County no more than two million dollars. (Resolution No. R-175-93)

The CA acknowledged that the GMSC Board of Directors is solely responsible for all the policy and management decisions of GMSC programs and their operation. Also, that GMSC shall in no event be considered to be an agent of the County.

This CA was renewed annually until 2006, when GMSC was unable to meet its financial obligations to the County. At that time, the BCC authorized the use of County general funds to satisfy GMSC outstanding debt obligations to the County.

More recently, in 2019, the BCC again approved a CA between the County through CAHSD and GMSC, to run from 2018 to 2020, with three one-year options to renew. (Resolution No. R-842-19) It appears then that the CA expired on September 30, 2023.

Facts:

Again, the GMSC is a Florida nonprofit corporation. While it has been suggested that GMSC is a division of CAHSD and that it is a quasi-governmental agency, the most recent CA continues

¹ Marilyn Batson, an Accountant employed by CAHSD, has also been listed as the GMSC "Fiscal Officer" in IRS Form 990 filings for Fiscal years 2019, 2020, and 2021. Form 990 is the primary IRS tool for gathering information about tax-exempt organizations, educating organizations about tax law requirements, and promoting compliance. This opinion does not address Ms. Batson's possible dual CAHSD and GMSC engagement.

to provide, quite explicitly, that GMSC is “only a recipient of County support and is not an agent or instrumentality of the County.” Consistent with its status as a nonprofit corporation, the CA allows GMSC to terminate its contractual relationship with the County, without cause, by providing at least thirty (30) days’ notice.

The GMSC board is comprised almost exclusively of noncounty employees, and it does not function as a public board that is compliant with Florida’s public meetings law, section 286.011, Florida Statutes, commonly referred to as the Sunshine Law. Consequently, there is no public right of access to the GMSC board meetings nor are its minutes or actions public reported.

Different County departments, including CAHSD, Transportation and Public Works (DTPW), Public Housing Community Development (PHCD), and Water and Sewer (WASD) contract with GMSC as a service provider. In these scenarios, the County is the service requester/grantor and GMSC is the service provider/grantee. Ms. Dorsett, in her capacity as the GMSC Executive Director, is responsible for assuring that the nonprofit complies with its service provider/grantee obligations to the County.

Non-county entities, including private nonprofits and local, state, and federal government agencies also contract with GMSC as a service provider. Similarly, Ms. Dorsett, in her capacity as the GMSC Executive Director, is responsible for assuring that the nonprofit complies with its service provider/grantee obligations to these entities.

Finally, GMSC also hires/contracts private vendors. For example, over a recent three-year period, GMSC contracted with CAHSD’s Energy Division for painting and facilities maintenance services on CAHSD/County owned properties. As a part of this arrangement, over three million dollars flowed from the County through CAHSD to GMSC, who in turn hired several dozen vendors to provide property maintenance services.

The County Attorney’s Office is not counsel for the GMSC. For the nonprofit, legal review of the grantor/grantee contracts is often provided pro bono by private attorneys that have an engagement history with GMSC. At times, the legal services are provided by attorneys who previously served as members of the GMSC board.

Funds received from federal, state, county and municipal governments, and private nonprofits are deposited into a GMSC bank account. As part of her duties as the GMSC Executive Director, Ms. Dorsett is the signatory to most, if not all, of the grantor/grantee contracts and also an authorized signatory on the bank account. Payments made from the bank account are co-signed by Ms. Dorsett and a GMSC board member.

Including Ms. Dorsett, there are nine County employees that are dual engaged by the GMSC. GMSC augments its employee complement by contracting with third-party employment agencies, that in turn provide temporary employees for the nonprofit. Consequently, Ms. Dorsett supervises County employees and contracted employees. Currently, the contracted employees are provided by Alpha 1 Staffing and Pack Plus Staffing.

GMSC procures some products and services directly and does not utilize the County’s procurement processes or staff.

Finally, while Ms. Dorsett is employed and compensated as a full-time County employee, GMSC reimburses the County for the costs of her salary and benefits. Additionally, GMSC reimburses Ms. Dorsett for costs she may incur in performing her duties as the nonprofit's chief executive. Also, Ms. Dorsett has access and authority to utilize a GMSC purchase card. These transactions are guided by policies and procedures set by the GMSC board.

Issue:

Whether a Division Director in the Community Action and Human Services Department (CAHSD) may serve as the Executive Director of a nonprofit company that contracts with the County through CAHSD.

Brief Answer:

A Division Director in the Community Action and Human Services Department (CAHSD) may not serve as the Executive Director of a nonprofit company that contracts with the County through CAHSD.

Discussion:

Section 2-11.1(j) of the Miami-Dade Code, relating to outside employment, prohibits County employees from engaging in other employment which would impair the 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.²

Also, Section 2-11 of the Miami-Dade Code provides that: "No full-time County employee shall accept outside employment, either incidental, occasional or otherwise, where County time, equipment or material is to be used or where such employment or any part thereof is to be performed on County time." This other employment must be approved by the employee's department head. Directors and supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. (INQ 22-22; INQ 19-101; INQ 13-28.)

Finally, County Administrative Order 7-1 also provides that County employees must conduct the public's business without *an appearance of conflicting loyalties*: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

² In a recent response to a December 2023 County Audit and Management Services (AMS) audit, the GMSC interpreted the "other employment" clause in Section 2-11.1(j) of the Miami-Dade Code, to exclude Ms. Dorsett and other CAHSD employees that are engaged full-time with GMSC because they have been "assigned" by the County. To be very clear, there is no such exclusion in the ordinance nor does the Ethics Commission interpret subsection (j) of the County Ethics Code in that manner.

As regards voluntary nonprofit board service, serving as a board member of a nonprofit on a compensated or uncompensated basis, if a County employee is involved in aspects relating to the administration of that entity, will constitute outside employment. (RQO 17-03)

Moreover, if the County employee is a senior member of the Mayor's or a County Commissioner's staff, or a County executive with significant discretionary authority, then because of the public and prominent nature of these positions, unpaid engagements with the nonprofits, even if the employee were to serve only as a board or committee member, will be treated as regular outside employment. (INQ 2021-91; INQ 2021-70; INQ 2021-89)

The Ethics Commission has repeatedly and consistently interpreted Section 2-11.1(j) to prohibit outside employment when county employment and other employment involves pursuits that overlap or are closely related; that results in an employee routinely interacting in his or her other role with County staff or persons that are receiving County services; where there is an overlap in county work hours and the other employment schedule; when the public employment worksite will also be the site of the other employment; or if the employee, his or her supervisor, or employing County department, are responsible for oversight or management of the employee's other employer or clients. (RQO 12-11; RQO 15-03; RQO 16-02; INQ 11-67; INQ 12-159; INQ 15-49; INQ 17-241; INQ 20-03)

Section 2-11.1(m) of the County Ethics Code prohibits employees from appearing before any County Board or agency when making a presentation on behalf of a third party and also prohibits the receipt of any compensation, directly or indirectly, from any party that is applying or seeking a benefit from the County, in relation to the benefit sought. The Ethics Commission has interpreted this section as prohibiting a County employee that is privately employed as a consultant from appearing *or meeting* with County staff on behalf of private clients. (RQO 05-15; RQO 12-10)

Consequently, when an employee is engaged with a nonprofit that is focused on providing services to at-risk and lesser served youth and seeks grant funding from local governments including the County, then the employee may not appear before any County board, or interact with County staff in any manner, on behalf of the nonprofits.³

Even if a grant application, award, or administration occurred without the employee's involvement, the employee is prohibited from participation *in any manner* with this process. This prohibition is very expansive and prohibits any communications, in any form, intended to

³ See specifically, INQ 14-283 (CAHSD Director directed to formal opinion RQO 12-10, and advised that Section 2-11.1(m)(1), of the Miami-Dade Code, prohibited her, in her role as an unpaid board member of the Carrie Meek Foundation, a Florida nonprofit, from representing the nonprofit "with respect to any license, rate schedule, franchise, or other benefit sought" from the County and further, that the prohibition extended to any contacts with County personnel on any decision by the County impacting the nonprofit.

influence an individual within the County to take an official action impacting the nonprofit. (INQ 2023-30; INQ 16-48; INQ 16-22; INQ 14-170; INQ 12-13; INQ 11-01; INQ 10-201)

Opinion:

Applying the reasoning supporting the various ethics opinions cited above to the facts presented here, it is abundantly apparent that Ms. Dorsett's is engaged in outside employment with the GMSC.⁴

Moreover, her outside employment as the Executive Director of the Greater Miami Service Corps, Inc., creates a prohibited conflict of interest as defined in Section 2-11.1(j) of the Miami-Dade Code, inasmuch as there is intimate and continuous overlap between the county employment and private employment. Indeed, in this most unique arrangement, Ms. Dorsett's county job is purportedly to be the Executive Director of the GMSC.

Ms. Dorsett's dual engagement requires her to interact in her private nonprofit director's role with County staff or persons that are receiving County services; there is no delineation between her county work hours and her outside employment schedule; and in many respects, Ms. Dorsett herself in her public role, and CAHSD, are responsible for oversight or management of GMSCs clients or service recipients.

Plainly stated, while it has been suggested that GMSC is essentially a division of the greater Community Action and Human Services Department, legally and in practice, this is simply not the case. GMSC is not an instrumentality or agent of the County and Ms. Dorsett has obligations to the nonprofit corporation and its policy setting board that are independent of her County job responsibilities. Also, Ms. Dorsett is without question on both sides of service provider or grantor/grantee contracts between the County and GMSC.⁵

To be clear, the current arrangement between CAHSD and GMSC appears to have been in place for over two decades and is well known to the County and throughout the county. Nothing in this opinion should be interpreted to suggest that Ms. Dorsett has acted covertly or that she or those that work with her at GMSC are engaged in inappropriate conduct; this is an ethics opinion, not a report of investigation and based only on facts provided to this agency by persons in County government with relevant knowledge.

⁴ Ms. Dorsett has suggested that "outside employment" denotes compensation received from another entity with a separate federal identification number. This restrictive definition of outside employment has never been used by the Ethics Commission in its interpretation of Section 2-11.1(j), of the County Ethics Code.

⁵ Ms. Dorsett has questioned whether there are other County employees that are similarly situated, serving in the functional equivalent of executive director positions with other nonprofits, that are also County service providers or grantees. This is outside the parameters of this ethics opinion.

However, a violation of the County Ethics Code does not require actual corruption or that there be any actual loss suffered by the government as a result of an employee's conflict of interest. The Ethics Code is designed, in part, to prevent honest public employees from succumbing to temptation by prohibiting them from entering into or remaining in relationships which are fraught with temptation. ⁶

Whether other County departments or agencies have similar arrangements with nonprofits or whether there are ways to resolve the existing conflict-of-interest as relates to Ms. Dorsett is, is outside of the parameters of this ethics opinion . ⁷

This is an informal opinion issued by Ethics Commission legal staff based upon the plain reading of the ethics code and prior formal opinions issued by the Ethics Commission board. While an informal opinion, covered parties that act contrary to the opinion will be referred to the Ethics Commission's Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

If the requester, or other interested person, would like to appeal the opinion, then she may make a presentation to the Ethics Commission in open session. Undersigned counsel will assist with this process.

This opinion is limited to the facts as presented to the Commission on Ethics, is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. While there may be references to state statutes, questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

Thank you again for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance.

Sincerely,



Jose J. Arrojo
Executive Director

⁶ *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 549-550 (1961)

⁷ In a recent response to a December 2023 County Audit and Management Services (AMS) audit, the GMSC has suggested that establishing an "ethical wall" preventing "GMSC County Employees" access to records that would give GMSC an advantage with respect to service applications for County service contracts and grant applications will resolve current conflicts-of-interests. There was no consultation between the GMSC and the Ethics Commission predicate to this conclusory suggestion. Plainly stated, the so-called "ethical wall" will not resolve the existing prohibited conflict of interest that has been described in this opinion.

cc: Deborah Dorsett, CAHSD Division Director
David Clodfelter, OMB Director
Felix Jimenez, Inspector General
Shanika Graves, Esq., Assistant County Attorney
Marie Perikles, Esq., Deputy General Counsel, OIG
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