




MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Rhenie Dalger
Chief of Staff
District 2 County Commissioner

FROM: Jose J. Arrojo, Esq.
Executive Director 

SUBJECT: INQ 2023-30, Section 2-11.1 (j), Outside Employment

DATE: March 17, 2023

CC: COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to your outside employment as the principal and President of a for-profit company and to your service as a voluntary member of several nonprofit corporate boards.

Facts:

You are the District 2 County Commissioner's Chief of Staff. As part of your public duties, you supervise the district commission staff and serve as the elected official's direct report. You are engaged in policy, legislation, communications, and constituent service matters, as assigned, and directed by the elected official.

You serve as the principal and President of a for-profit company and as a voluntary member of several nonprofit corporate boards. You are not paid by the nonprofits, and you are not engaged in the day-to-day running of the entities.

Global Tactical Advanced Communications Corporation (Globatac) is a Florida for profit corporation. You are the *principal* and *Chief Executive Officer* and *President* of Global Tactical. Globatac provides communications, public relations, media relations, marketing, advertising, and creative design services to private clients. Globatac is not engaged with Miami-Dade County and your work through the company does not bring you into regular contact with County employees or with persons that regularly receive County services.

FANM in Action, Inc. is a Florida nonprofit corporation. You are a corporate *Director* for FANM in Action. FANM in Action describes itself as follows: an organization that works to establish an inclusive, equitable, and just society for all, by training, educating, organizing, and mobilizing grassroots citizens from the bottom up. It encourages individual participation by citizens in political decisions and policies that impact their lives. A key aspect of its activities is geared toward expanding non-partisan civic engagement in order to increase the community representation through strategic naturalization, voter registration, get out the vote activities as well as candidate cultivation and cultural education.

Florida Immigrant Coalition, Inc. (FLIC) is a Florida nonprofit corporation. You are the corporate *Vice President* for FLIC. FLIC describes itself as follows: a coalition of member organizations working together for the treatment of all people, focusing on support of immigrants. FLIC represents that through its work it, more than 6,000 permanent residents became Naturalized Citizens and close to 60,000 new voters in Florida were registered.

FLIC Votes, Inc. is a Florida nonprofit corporation. You are the corporate *Treasurer* for FLIC Votes. FLIC Votes describes itself as follows: an organization that seeks to expand democracy by engaging low propensity, underrepresented, an underinvested voters and transforming them into an active and conscious electorate that reflects the diversity of Florida while engaging those who can't yet vote.

1. BETEDD Ministry Corporation (BETEDD) is a Florida nonprofit corporation and the parent entity for BETEDD Ministry Baptist Church. You are a corporate *Director* for BETEDD. BETEDD describes itself as follows: a congregation that develops and cultivates alternative leadership in the ministry of Jesus Christ through worship, education, and programs that contribute to congregants' spiritual, social, and professional growth.

Family Action Network Movement, Inc. (FANM) is a Florida nonprofit corporation. Marleine Bastien, the County Commissioner for District 2, for whom you serve as Chief of Staff, is the Executive Director of FANM. You are the *Communications and Development Director* and provide services to FANM, as a Globatac client. FANM describes itself as follows: an organization that advocates for lower income and marginalized residents, providing wrap-around services such as mental health, crisis and domestic violence intervention, counseling, health care access, job training, financial literacy, adult education and after school programs. FANM also advocates and organizes its members around issues relating to affordable housing, immigration reform, and climate gentrification and equity.

FANM is a County grant recipient and obligated to the County through a grantor/grantee contract. FANM is also a tenant in a County owned building located at 100 Northeast 84th Street, Miami, Florida. FANM is obligated to the County through a landlord/tenant contract.

You advise that the District 2 County Commissioner is aware of your work with the for-profit entity and the various nonprofits, and that she has approved of your continuing engagements, as long as the service is consistent with the requirements imposed on County officials and employees under the County Ethics Code.

Issues:

Whether your outside employment as the principal and President of a communications and public relations company is permissible.

Whether you may provide consulting services through your communications and public relations company to a nonprofit County grant recipient that also leases space from the County.

Whether your service as a volunteer board member for several nonprofits is permissible.

Discussion and Opinion:

1. Outside Employment with Globatac:

Several sections of the Miami-Dade Code of Ethics must be considered in analyzing whether a County employee's outside employment gives rise to a prohibited conflict of interest. Principally, Section 2-11.1(j) of the County Ethics Code prohibits outside employment which would impair the employee's independence of judgement in the performance of his or her public duties. (*See also* Miami-Dade Administrative Order 7-1)

The Ethics Commission has interpreted Section 2-11.1(j) to prohibit outside employment that results in an employee routinely interacting in his or her private role with County staff or persons that are receiving County services; where there is an overlap in county work hours and the outside employment schedule; when the public employment worksite will also be the site of the outside employment; or if the employee, his or her supervisor, or employing County department, are responsible for oversight or management of the employee's outside employer or clients. (RQO 1602; INQ 11-67; INQ 20-03)

It does not readily appear that your outside employment with Globatac as the principal and President of a communications and public relations company will create a prohibited conflict of interest as defined in Section 2-11.1(j) of the Ethics Code, inasmuch as you have advised that there is no overlap in your county work hours and your private work, the locations of the two jobs are separate, and because in your private work you will not have regular interaction with County staff or persons that are receiving County benefits.

You should nevertheless be cautious when informing your potential clients of your employment with the County in service of an elected official. Of course, your experience and qualifications are your own, but the use of County seals or other paraphernalia should be avoided. To avoid even the appearance of impropriety, you should never suggest to private clients that your public employment will afford them some special benefit or access that is ordinarily not available to a similarly situated consultant that is not publicly employed.

Employees are also cautioned, if they are retained or otherwise contracted by a person or party that has a contract with the County, that Section 2-11.1(u) of the County Ethics Code prohibits an employee on the staff of a County elected official, or certain County managers, from entering into business transaction with an entity or person that has a contract with the County, unless the transaction is arm's length transaction.¹

While not a restriction on outside employment, Section 2-11.1 (k) requires County employees engaged in outside employment to request permission on an annual basis and also file an annual outside employment financial disclosure form reporting any money received from your employment. This form must include any money earned even if the business is not profitable. As such, each year you will be required to report your earnings from Globatac.

2. Engagement with Various Nonprofits:

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, may constitute outside employment. (*See generally* RQO 17-03)

Additionally, in abundance of caution, if the County employee is a senior member of the Mayor's or a County Commissioner's staff, then because of the public and prominent nature of these positions, engagements with the non-profits, including those on which the employee serves only as a board or committee member, will be treated as regular outside employment. (*See* INQ 202191; INQ 2021-70; INQ 2021-89)

Again, it does not readily appear that your engagement with the various nonprofits will create a prohibited conflict of interest as defined in Section 2-11.1(j) of the Ethics Code, inasmuch as you have advised that there is no overlap in your county work hours and your private work, the locations of the two jobs are separate, and because in your work with the nonprofits you will not have regular interaction with County staff or persons that are receiving County benefits.

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, because the nonprofits that you are engaged with are focused on providing services to at-risk and lesser served communities and may seek grant funding from local governments

¹ *See also* Section 112.313(7)(a), Fla. Stat. (No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, with a notable exception of an engagement with a nonprofit that contracts with the agency as provided for in Section 112.313(15), Fla. Stat.)

including the County, you are cautioned against appearing before any County board, or interacting with County staff in any manner, on behalf of the nonprofits.

Even if the grant application, award, or administration occurred without your involvement or that of the District 2 Commissioner's Office, you could not be involved *in any manner* with this process. Please be advised that the County Ethics Commission has interpreted this prohibition very expansively to include any communications, in any form, intended to influence an individual within the County to take an official action. (See INQ 16-48, 16-22, INQ 14-170, INQ 12-13, INQ 11-01, and INQ 10-201)

With respect to fundraising on behalf of nonprofits, the County Ethics Code prohibits County employees from soliciting any gifts in exchange for an official action. (Section 2-11.1(e)(3)). This obviously means that you could not solicit or accept a gift on behalf of the non-profits in exchange for any official action you take as a County employee.

However, outside of a prohibited *quid pro quo* scenario, solicitation of gifts on behalf of a nonprofit organization is not generally prohibited, particularly where an employee is not compensated by the 501(c)(3) entity. (See generally INQ 16-93) You should nevertheless avoid direct, targeted solicitations of County vendors and lobbyists on behalf of the non-profits, even if the solicitation is not prohibited, in order to avoid situations where a County vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. (See INQ 16-275)

3. General Prohibitions:

All of the standard prohibitions that apply to County employees engaged in outside employment would apply to your service as a principal and President of the for-profit Globatac and your volunteer service with the nonprofits as well:

You may not use County time or resources in your outside employment. See Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.

You may not engage in activities that relate in any way to your outside employment during your County work hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County computer programs, computer licenses purchased by the County, County vehicles, in connection with your outside employment, even after work). See Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05- 29, and INQ 15-240.

You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, or a benefit for the non-profits or their clients and service recipients. See Section 211.1(h), Miami-Dade County Ethics Code.

You may not exploit your County position to secure special privileges or exemptions for yourself, the non-profits or their clients and service recipients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

You may not represent any of the non-profits before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173.

Finally, the County's Conflict of Interest and Code of Ethics provides the *minimum standard* of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants. Avoiding an appearance of impropriety is even more important given that you engaged as the Chief of Staff for a member of the Board of County Commissioners.

Consequently, you should make all efforts to avoid any overlap between your role as the Commissioner's Chief of Staff and your roles with the for-profit and the various nonprofits so that there is no suggestion that you are using your public position or resources to secure a special privilege or exemption for these entities.

This opinion is limited to the facts as you presented them 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.

<p>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 Ethics Commission 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.</p>
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