



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: David Marin
Director of Policy and Legislation
District 13 County Commissioner

FROM: Jose J. Arrojo, Executive Director
Commission on Ethics & Public Trust

SUBJECT: INQ 2023-31, Sections 2-11.1(j), (v), and (m)(2), County Ethics Code
Dual Employee and Board Service

DATE: March 15, 2023

CC: Javier Betancourt, Executive Director, CITT
COE Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting guidance regarding the application of the County Ethics Code's provisions to your prospective dual service as a County employee and CITT board member.

Background:

The Citizen's Independent Transportation Trust (CITT) is a semi-autonomous County board responsible for the management of the half-penny County transportation surtax and the implementation and oversight of the County projects in the People's Transportation Plan (PTP). The board reviews contracts requesting PTP funding and monitors all surtax-funded projects. CITT works closely with members of the Board of County Commissioners (BCC), the County administration, staff at Miami-Dade Department of Transportation and Public Works (DTPW) and municipal officials to insure proper expenditure of PTP funds.

You are a County employee serving as the Director of Policy and Legislation on the District 13 County Commissioner's staff. You have a decades long professional history working as a legislative assistant in the Florida Senate and you have also held government relations positions with other public agencies, including Miami-Dade College and the Florida Department of

Transportation. In your current position, you provide support and guidance to the District 13 County Commissioner on legislative matters, and other senior staff matters at his direction.

You are not directly or primarily assigned in your position as the Commissioner's Director of Policy and Legislation to matters specifically relating to the half-penny County transportation surtax or the People's Transportation Plan.

You do not have any outside employment with any entity that contracts with the County.

The District 13 County Commissioner, for whom you work, has proposed you as his appointee to the CITT.

Issue:

Whether dual service as director of policy and legislation on a County Commissioner's staff and as a member of the Citizens Independent Transportation Trust creates a prohibited conflict of interest.

Discussion:

The Ethics Commission may consider and opine on whether a prospective CITT board member has a conflict of interest, pursuant to the County Ethics Code, that would prohibit his or her service on the board. Also, a finding by the Ethics Commission that a CITT member has violated an ethics code provision can result in the member's removal.¹

The Conflict of Interest and Code of Ethics ordinance (County Ethics Code) does not prohibit a County employee from serving as a member of the CITT, but other provisions of the County Code provide that service on the CITT will prohibit service on other County boards.²

¹ Sections 2-1421(i) and (j), Miami-Dade County Code (CITT is subject to the Miami-Dade Conflict of Interest and Code of Ethics Ordinance. A finding by the Ethics Commission that a person serving as a member of the Trust has in the course of his or her service willfully violated any provision of the Conflict of Interest and Code of Ethics Ordinance shall constitute malfeasance in office and shall effect an automatic forfeiture of such person's position as a member of the Trust.)

² INQ 2021-13 (A county employee in the Parks, Recreation and Open Spaces Department (PROS) is not prohibited from serving on the CITT.); *See also* INQ 14-168; INQ 19-33; INQ 20-137.

Section 2-11.38, Miami-Dade County Code (No person shall serve on more than two (2) County boards simultaneously, unless the Commission has by unanimous vote approved the appointment after being advised of all other County board(s) upon which the person sits, provided, however, a person serving on any one of the following boards shall not serve on any other County board simultaneously except as provided by ordinance: Community Council; Community Zoning Appeals Board; Planning Advisory Board; *Citizens' Independent Transportation Trust*; Housing Finance Authority; Independent Review Panel; Industrial Development Authority; Health Facilities Authority; Educational Facilities Authority; Commission on Ethics and Public Trust; Environmental Quality Control Board; The Children's Trust; and the Public Health Trust. Notwithstanding the foregoing, a person is prohibited from serving on a County board where such service would violate federal or state law, the Miami-Dade County Home Rule Charter or county ordinance.)

As regards voluntary 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.³

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 these boards, including those on which the employee serves only as a board or committee member, will be reviewed as regular outside employment.⁴

Consequently, there should not be an overlap between the employee's County job duties and responsibilities and the board service. Plainly stated, as an employee, he or she should avoid dealing with matters that may foreseeably come before the board, and as a board member, he or she should avoid dealing with County elected officials and their staff on board matters.⁵

Also, while an employee is not prohibited from serving in the CITT, it is important to note the following provisions of the County Ethics Code are applicable to County employees and board members:

Section 2-11.1(v) of the County Ethics Code, prohibits a board member from participating or voting on a matter if the board member has an enumerated relationship (officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any entity affected by the vote and the board member might, directly or indirectly, profit or be enhanced by the board action. In order for a voting conflict to exist, both prongs of section (v) must be met.⁶

Section 2-11.1(m)(2), of the County Ethics Code prohibits a board member from appearing before his or her board on behalf of a third party. Also, the CITT board member may not appear before another County board or department on behalf of a third party for projects that will be funded with surtax proceeds and should avoid contacts with the Mayor, Commissioners, and County staff regarding surtax funded matters.⁷

³ See generally RQO 17-03.

⁴ See INQ 2021- 91; INQ 2021-70; INQ 2021-89.

⁵ See Section 2-11.1(j), County Ethics Code; INQ 2020-137; INQ 17-52.

See also Section Sec. 2-1421(i), Miami-Dade Code, (CITT board members shall not lobby, directly or indirectly, the Mayor, any member of the County Commission or any member of County staff regarding a project funded in whole or in part by surtax proceeds, or regarding any person or business bidding for or under contract for a project funded in whole or in part with surtax proceeds. Trust members shall not have any interest, direct or indirect, in any contract with the County or in any corporation, partnership or other entity that has a contract with the County.)

⁶ See RQO 07-49, INQ 20-73.

⁷ See INQ 13-224; See also Section 2-1421(i), Miami-Dade Code (Trust members shall not lobby, directly or indirectly, the Mayor, any member of the County Commission or any member of County staff regarding a project funded in whole or in part by surtax proceeds, or regarding any person or business bidding for or under contract for a project funded in whole or in part with surtax proceeds.)

Section 2-11.1(g), of the County Ethics Code prohibits a board member and County employee may from using his or her official position to gain special privileges or exemptions for a third party.

Finally, pursuant to Section 2-11.1(i), a County board member must file a financial disclosure form each year.

Opinion:

Under the facts provided herein, you are not prohibited from serving on the CITT. However, you should make all efforts to prevent any overlap between your role as a County employee on a Commissioner's staff, and your dual service as a CITT board member.

If you have any questions regarding a specific employment assignment or board agenda item, you are encouraged to seek further guidance.

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

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.