



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Lorna Mejia-Lopez
Chief, Public Engagement and Community Outreach
Miami-Dade County Department of Regulatory and Economic Resources

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-39; Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(w), Prohibition on acceptance of travel expenses from county vendors

DATE: April 1, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest between your County employment and your anticipated acceptance of a reimbursement of the registration fee and travel expenses to attend the Animal Care Expo in New Orleans, Louisiana.

Facts

You are employed as the Chief for Public Engagement and Community Outreach for the Miami-Dade County Department of Regulatory and Economic Resources (“RER”). Your primary job responsibilities include overseeing RER’s Communications Unit, supervising constituent affairs activities, and furthering public engagement and outreach efforts pertaining to a number of RER divisions, including Board and Code Administration, Building and Permitting, Code Compliance, Consumer Protection, Division of Environmental Resource Management (“DERM”), Development Services, and Planning.

You advised that you intend to attend the Animal Care Expo,¹ an event occurring in New Orleans, Louisiana, from April 2 through April 6, 2023. The event is organized by The Humane Society of

¹ The Animal Care Expo is an international educational conference and trade show for animal welfare professionals and volunteers who come together to learn about the latest programs, share best practices,

the United States (“HSUS”), a non-profit organization headquartered in Washington, District of Columbia, that “fights for the protection of all animals through advocacy, education and hands-on programs.”² HSUS does not oversee, and is not affiliated with, local humane societies.³ Specifically, HSUS is not affiliated with the Humane Society of Greater Miami, Dade County Society for Prevention of Cruelty to Animals, Adopt-a-Pet and Pet Rescue, Inc. (“HSGM”). HSGM is a Florida not-for-profit corporation that works locally in Miami-Dade County and operates an adoption-guarantee shelter and a preventative veterinary clinic.⁴ You advised that it is your understanding that HSUS does not do business with Miami-Dade County. A Procurement Contracting Officer with the Miami-Dade County Strategic Procurement Department (“SPD”) confirmed that there are no current or pending contracts between the County and HSUS.

In order to attend HSUS’s Animal Care Expo, you advised that you applied for and received a “scholarship” from HSUS. You provided documents related to the “scholarship,” including a Stipend Agreement and a federal Form W-9 that you have been asked to complete. The Stipend Agreement provides that a total amount of \$1,495.45 is being given to you for your use “solely for the purpose of offsetting costs associated with travel, lodging, and other expenses related to attending and/or presenting” at the Animal Care Expo. Review of materials you provided shows that the funds for the stipend were provided to HSUS by Maddie’s Fund⁵ for the purpose of sponsoring sixty black, indigenous, and people of color (“BIPOC”) attendees to the Animal Care Expo. You advised that you applied for the stipend to continue your volunteer work with HSUS in developing and supporting BIPOC professionals in the animal welfare community, explaining that, at the Animal Care Expo, you will be paired with one or more mentees so that you may support them as they navigate through the conference to learn about opportunities to create and develop programs that benefit underserved populations and pets in their own communities.

Issue

Whether any prohibited conflict of interest may exist between your County employment and your anticipated acceptance of a stipend reimbursing you for registration fee and travel expenses related to your attendance of HSUS’s Animal Care Expo.

Analysis

This inquiry involves several sections of the County Ethics Code, each of which is analyzed below:

gain inspiration, and build connections. See *About Animal Care Expo*, HUMANEPRO, <https://humanepro.org/expo/about-animal-care-expo> (last visited Mar. 28, 2023).

² *General FAQ*, THE HUMANE SOCIETY OF THE UNITED STATES, <https://www.humanesociety.org/resources/general-faq> (last visited Mar. 28, 2023).

³ *Id.*

⁴ *Who We Are*, HUMANE SOCIETY OF GREATER MIAMI, <https://www.humanesocietymiami.org/about-us/who-we-are/> (last visited Mar. 28, 2023).

⁵ Maddie’s Fund is a not for profit family foundation established with the mission of revolutionizing the status and well-being of companion animals. See *Fact Sheet*, MADDIE’S FUND, <https://www.maddiesfund.org/fact-sheet.htm> (last visited Mar. 29, 2023).

A. Section 2-11.1(j) – Conflicting Employment Prohibited

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) provides that no person who is considered a County employee “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). Outside employment is 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.

Generally, uncompensated outside employment for a traditional nonprofit entity is not considered outside employment. *Id.*; INQ 13-236. However, a County employee who has “significant managerial responsibilities or working time commitments” with a nonprofit entity could be considered to be engaging in outside employment. *Id.* Multiple factors are considered when determining whether service with a non-profit is considered outside employment, including: (a) whether the person founded the non-profit; (b) whether the person serves as the non-profit’s Executive Director or President, or in some other office; (c) whether the person is responsible for the non-profit’s day-to-day functioning or activities; (d) whether the person receives any form of compensation for his or her service to the non-profit; and, (e) whether the person has significant time commitments as part of his or her service to the non-profit. *See* INQ 22-44; *see also* RQO 17-03.

In practice, a Manager in the Planning and Research Division of the Miami-Dade County Parks, Recreation and Open Spaces Department (“PROS”) was engaged in outside employment when he accepted an invitation to participate in the Robert Wood Johnson Foundation Interdisciplinary Research Leaders Program because he received \$25,000.00 to participate in the program, receive leadership training, and in return provide high-quality, equity-focused health research. *See* RQO 17-01. Additionally, a Courtroom Clerk 1 with the Miami-Dade County Clerk of the Courts was engaged in outside employment when he received a stipend of \$1,473.00 when he volunteered to be an Assistant Football Coach for Miami Beach Senior High School. *See* INQ 16-140. However, County staff employed by the Miami-Dade Library System who received stipends to attend library-services-related conferences in their personal, non-professional capacities must report those stipends as gifts. *See* INQ 09-75.

Here, this is a close case where the facts, as you describe them, might have been considered a gift. *See* INQ 09-75. However, on examination of all the totality of the facts, we conclude that **your acceptance of the stipend from HSUS to cover the costs of travelling to and attending the Animal Care Expo in order to continue your volunteer work and mentor other conference attendees would constitute outside employment.** We reach this conclusion because HSUS has asked you to enter into an agreement restricting your use of the stipend funds being provided, HSUS has asked you to complete and file a federal W-9 tax form in relation to your acceptance of the stipend funds, and you will be rendering a service to HSUS in exchange for the stipend – i.e., mentoring other conference attendees in furtherance of HSUS’ mission. The provision of payment can transform volunteer work that would likely otherwise not be considered outside employment into outside employment. *See* INQ 16-140.

Furthermore, based on the information provided to us at this time, **your acceptance of the stipend from HSUS will not give rise to a prohibited conflict of interest.** See RQO 17-01; INQ 16-140. This is because there is no overlap between your public duties and your travel to the Animal Care Expo: you will take leave to attend the conference, you will not come into contact with the same or similar persons or entities who are involved in your County work, you will not use the same or similar resources at the Animal Care Expo as you use in your County work, and you do not have access to non-public information as part of your County employment that is, or could be, relevant to your attendance of the Animal Care Expo. See RQO 17-01; INQ 16-140.

However, County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee's department. See AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. **Accordingly, this memorandum does not grant permission to engage in outside employment. You must obtain permission to engage in outside employment annually from your department director.** Furthermore, given that you are a full-time employee, you must also file with the County Election's Department an outside employment financial disclosure form⁶ – Outside Employment Statement – on July 1st of each year for income from outside employment earned during the preceding year. See County Ethics Code § 2 11.1(k)(2).

B. Section 2-11.1(w) – Prohibition on Acceptance of Travel Expenses from County Vendors

The County Ethics Code provides that no County employee, “shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county contractor, vendor, service provider, bidder or proposer.” County Ethics Code § 2-11.1(w). Here, on review of public records and a discussion with a County Procurement Contracting Officer with SPD, it does not appear that either HSUS or Maddie's Fund do business with the County. While HSGM is a registered County contractor and has done business with the County in the past, a review of publicly available information on HSUS's website and a discussion with HSGM's Director of Development confirmed that HSGM and HSUS do not have any affiliation or association with one another.⁷ Accordingly, **because neither HSUS nor Maddie's Fund do business with the County, section 2-11.1(w) would not prohibit you from accepting the stipend from HSUS to attend the Animal Care Expo.** See RQO 15-02; INQ 12-97.

C. Section 2-11.1(m) – Certain Appearances and Payment Prohibited

The County Ethics Code provides that no County employee, “shall appear before any County board or agency and make a presentation on behalf of a third person with respect to any . . . benefit sought by the third person.” County Ethics Code § 2-11.1(m)(1). The County Ethics Code further provides

⁶ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

⁷ *General FAQ*, THE HUMANE SOCIETY OF THE UNITED STATES, <https://www.humanesociety.org/resources/general-faq> (last visited Mar. 28, 2023).

that no County employee shall, “receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person.” *Id.*

Here, you are prohibited from appearing and/or lobbying before any part of RER on behalf of HSUS or Maddie’s Fund. *See* County Ethics Code § 2-11.1(m)(1). Furthermore, insofar as HSUS or Maddie’s Fund may have any matter pending before any part of RER, you would be prohibited from accepting any compensation from HSUS or Maddie’s Fund, whether directly or indirectly, for services rendered to them in connection with that matter. *See id.*

D. Section 2-11.1(g) – Exploitation of Official Position Prohibited

The County Ethics Code provides that no County 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. County Ethics Code § 2-11.1(g).

Here, you are prohibited from using your position as Chief for Public Engagement and Community Outreach for RER to secure any special privileges or exemptions for yourself and/or for HSUS and/or Maddie’s Fund. *See id.*; INQ 21-13 (prohibiting a CITT Board Member from using her office to secure any special privileges or exemptions for a non-profit organization on which she concurrently served as Vice-President). This means that you may not advantage HSUS or Maddie’s Fund in any matter that may come before RER.

Opinion

Based on the facts presented here and discussed above, the County Ethics Code does not prohibit you from accepting a stipend that reimburses you for registration fees and travel expenses related to your attendance of HSUS’s Animal Care Expo because accepting such outside income does not give rise to a prohibited conflict of interest. *See* County Ethics Code §§ 2-11.1(j), (w); RQO 17-01; INQ 16-140.

However, with regard to your anticipated acceptance of the stipend and participation in HSUS’s Animal Care Expo, you are required to abide by the restrictions discussed above. *See* County Ethics Code §§ 2.11-1(g), (m)(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.

Other conflicts may apply based on directives from RER or under state law. Questions regarding possible conflicts based on your departmental directives should be directed to your supervisor or 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.