




MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Carladenise Edwards
Senior Advisor to the Chief Financial Officer

FROM: Jose J. Arrojo, Esq.
Executive Director 

SUBJECT: INQ 2023-43, Section 2-11.1 (j), Outside Employment

DATE: April 10, 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 Miami-Dade Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) to your outside employment

Facts:

You are a Ph.D. in Medical Sociology and have significant senior executive experience in strategic and financial planning in government, academia, and the healthcare and technology fields.

You have accepted a position in the Mayor's office as a Senior Advisor to County's Chief Financial Officer.

In your private capacity, you are affiliated with several entities. These include professional associations and nonprofits that you serve in a volunteer basis, and also for-profit entities that compensate you with periodic payments and stock options.

You have identified the following affiliated entities: ¹

- American Board of Internal Medicine (ABIM), Nonprofit Board Director, Quarterly Honorarium
- Healthcare Financial Management Associations (HFMA), Nonprofit Board Director, Volunteer

¹ Listing format: "[Entity], [relationship or service capacity], [compensation, if any]"

- Clover Health, Publicly Traded For-Profit, Independent Director, Quarterly Payments and Stock Options
- Sound Physicians, For-Profit, Independent Director, Stock Options
- CancerIQ, For-Profit, Independent Director, Monthly Retainer and Stock Options
- Mae., Independent Director, For-Profit, Stock Options
- Parsley Health, For-Profit, Strategic Advisor, Monthly Retainer and Stock Options
- 4L Data Intelligence (Apatics), For-Profit, Strategic Advisor, Stock Options
- Functional Fluidics, For-Profit, Investor, Equity Partner Distributions
- Upfront Healthcare, For-Profit, Independent Director, Stock Options
- Heluna Health, Nonprofit, Volunteer Board Director
- Penn LDI, Volunteer Board Advisor
- Penn Nursing, Volunteer Board Director
- Johnson C. Smith University, Donor

You advise that none of the aforementioned entities are currently engaged with Miami-Dade County or the Public Health Trust/Jackson Health Systems, nor are they engaged with any persons or entities that contract with the County. To your knowledge, the entities are not seeking to contract with Miami-Dade County or the Public Health Trust/Jackson Health Systems, nor are they seeking to engage with County contractors in the future.

Moreover, you advise that any work performed for these entities in your private role will occur outside of your County work hours and will not involve the use of any County resources, to include County support staff.

Finally, you have sought and received the Mayor's approval to continue your involvement with these various entities, as long as this does not conflict with the County Ethics Code.

Issues:

Whether your outside employment is permissible.

Discussion:

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) of the County Ethics Code 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)

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, from entering into business transaction with an entity or person that has a contract with the County, unless the transaction is negotiated at arm's length.²

While not a restriction on outside employment, Section 2-11.1 (k) of the County Ethics Code 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 the employment. This form must include any money earned, even if the business is not profitable.

Volunteer engagement with nonprofits, serving in a voluntary position with a nonprofit on a compensated or uncompensated basis, if a County employee participates 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 2021-91; INQ 2021-70; INQ 2021-89)

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)

² *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.)

Consequently, if an employee is engaged with a nonprofit that seeks grant funding from the County, then he or she is cautioned against appearing before any County board, or interacting with County staff in any manner, on behalf of the nonprofit.

Even if the grant application, award, or administration occurs without the employee's involvement or that of his or her employee department, the employee cannot be involved *in any manner* with this process. 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 any nonprofit, 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 an employee may not solicit or accept a gift on behalf of the non-profit in exchange for any official action taken 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) Employees must 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)

Opinion:

It does not readily appear that your outside employment with any of the nonprofits or for-profit entities 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 work locations are separate, and because in your private work you will not interact with County staff or persons that are receiving County benefits.

You should nevertheless be cautious when informing your any private 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.

Also, you are required to request permission to engage in your outside employment on an annual basis and also file an annual outside employment financial disclosure form reporting any money received from the employment.

All of the standard prohibitions that apply to County employees engaged in outside employment would apply to your service with the various nonprofits and for-profits:

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 2-11.1 (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 are employed as a direct advisor to the Mayor.

Consequently, you should make all efforts to avoid any overlap between your role as the Mayor's strategic advisor and your roles with the for-profit and the nonprofit 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.

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.