

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 17, 2023

Via electronic mail only:
GWysong@miamigov.com

George K. Wysong III, Esq.
Miami Deputy City Attorney
444 Southwest 2nd Avenue
Miami, Florida 33130-1910

Re: INQ 2023-49, Sections 2-11.1(j), (v), and (m)(2), County Ethics Code
Dual Employee and Board Service

Dear Mr. Wysong:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and requesting guidance regarding the application of the County Ethics Code’s provisions to an employee’s prospective dual service as the Chief of Staff for a City of Miami Commissioner and as a member of the County Affordable Housing Advisory Board.

Background:

The Board of County Commissioners (“BCC”) re-established the Affordable Housing Advisory Board (“AHAB”) on September 4, 2007, through Ordinance 07-122, pursuant to Section 17-106 of the Miami-Dade County Code. The AHAB serves as the Affordable Housing Advisory Committee to the Board of County Commissioners (BCC) and meets the requirements in Section 420.9072 of the Florida Statutes and Section 420.9076 of the Florida Statutes.

The AHAB is required under Section 420.9076 of the Florida Statutes to review the County’s established policies and procedures, ordinances, land development regulations, and comprehensive plan, and to submit a report to the BCC with recommendations for specific actions or initiatives that will encourage or facilitate affordable housing development (known as ‘local housing incentive strategies’). Thereafter, the AHAB is required to review such strategies and the implementation of those adopted recommendations on a triennial basis. Additionally, the AHAB

has an ongoing role in reviewing local policies, ordinances, regulations, and plan provisions prior to adoption and identifying new incentive strategies.

The requester is the Chief of Staff for a City of Miami Commissioner (“employee”). As part of the employee’s duties, he or she supervises the district commissioner’s staff and serves as the elected official’s direct report. The employee is engaged in policy, legislation, communications, and constituent service matters, as assigned, and directed by the elected official.

The employee is not directly or primarily assigned in his or her municipal position to matters specifically relating to the AHAB. Also, the employee does not have any outside employment with any entity that contracts with the County.

The employee is contemplating accepting appointment to the AHAB.

Issue:

Whether dual service as the Chief of Staff for a City of Miami Commissioner and as a member of the County Affordable Housing Advisory Board creates a prohibited conflict of interest.

Discussion:

The County Ethics Code applies to the employee’s prospective service on the AHAB, inasmuch as municipal employees and County board members are covered parties under the Ethics Code.¹

Also, the AHAB’s establishment ordinance provides that the Ethics Commission may consider and opine on whether a prospective AHAB board member has a conflict of interest, pursuant to the County Ethics Code, that would prohibit his or her service on the board.²

The County Ethics Code does not prohibit a County or municipal employee from serving on a County or municipal board.³ However, Section 2-11.1(j) of the County Ethics Code prohibits

¹ Sections 2-11.1(a), (b)(4), (b)(5), Miami-Dade Code (The County Ethics Code applies to employees and advisory board members and shall also constitute the minimum standard of conduct for County and municipal personnel. Provisions shall apply to municipal personnel who serve in comparable capacities to County personnel referred to.)

² Section 7-106 (f)(5), Miami-Dade Code (The Board shall operate at all times under the Florida Open Government Laws, including the "Sunshine Law," public meeting laws and public records laws and shall be governed by all state and County conflict of interest laws, as applicable, including the Metropolitan Miami-Dade County conflict of Interest and Code of Ethics Ordinance, as amended.)

See also Section 2-11.39.2, Miami-Dade Code (The provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall be applicable to county boards.)

³ *But see* Section 2-11.38, Miami-Dade County Code (No person shall serve on more than two (2) County boards simultaneously, unless the BCC 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;

employees from engaging in certain activities that would impair their independence of judgment in the performance of their public duties.

In this case, because the employee is not directly or primarily assigned in his or her municipal position to matters specifically relating to the AHAB, and because he is a *municipal* employee contemplating service on a *County* board, then there does not appear that there is a prohibited conflict between the municipal employment and contemplated board service.⁴

Nevertheless, the employee should be very mindful of this provision given the fact that he or she works on the staff of an elected municipal official. The employee should make all efforts not to deal in his or her municipal position with any issue that could foreseeably come before the board and vice versa.⁵

Plainly stated, there should not be an overlap between the employee's municipal job duties and responsibilities and the County board service.⁶

The employee should know that there are state and local laws in addition to the County Ethics Code that address dual County and municipal service. The Ethics Commission is not authorized to interpret or enforce those provisions. We note this herein for informational purposes.

Also, while the employee is not prohibited from serving on the AHAB, it is important to note the following provisions of the County Ethics Code are applicable to County and municipal 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.⁷
- 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.

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.)

⁴ See INQ 21-51; INQ 16-03 (The Miami-Dade County Commission on Ethics and Public Trust has generally cautioned against the practice of *County* board service by *County employees* because several provisions of the Ethics Code are implicated with such service.)

⁵ INQ 2021-01.

⁶ See Section 2-11.1(j), County Ethics Code; INQ 2020-137; INQ 17-52.

⁷ See RQO 07-49, INQ 20-73.

- Section 2-11.1(g), of the County Ethics Code prohibits a board member from using his or her official position to gain special privileges or exemptions for a third party. Thus, if a municipal employee is required to attend board meetings during working hours, then he or she should coordinate with supervisors and confirm that voluntary board activity is permissible. The better practice would be to adjust the public work schedule such that the board activities are not conducted during regular work hours. Also, the employee should never engage in any action as a board member that suggests that he or she is using the municipal title, employment, position, or relationship with the Miami elected official.
- Section 2-11.1(h) of the County Ethics Code prohibits board members from disclosing confidential information obtained through their official positions or using such information, directly or indirectly, for personal gain or benefit.
- Finally, pursuant to Section 2-11.1(i) of the County Ethics Code, a County board member must file a financial disclosure form each year.

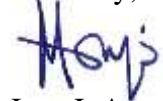
Opinion:

Under the facts provided herein, an employee serving as the Chief of Staff for a City of Miami Commissioner is not prohibited from serving on the AHAB. However, he or she should make all efforts to prevent any overlap between the role as a City of Miami employee on a Commissioner's staff, and the dual service as an AHAB 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 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.

Sincerely,



Jose J. Arrojo
Executive Director

cc: COE Legal Staff

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.