



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Anyelina Cuevas, HR Personnel Services Special
Miami-Dade County Human Resources Department

Hope McDonald, HR Recruitment Supervisor
Miami-Dade County Human Resources Department

FROM: Loressa Felix, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 2023-50 Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: April 19, 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 in your proposed outside employment.

Facts: You are employed as an HR Personnel Services Special for the Miami-Dade County Human Resources Department (HR). You would like to engage in outside employment as a clerk for the City of Opa-Locka Civil Service/Personnel Board.

As an HR Personnel Services Special, you are responsible for performing a variety of assignments in various phases of position classification and wage and salary administration. You conduct analysis and classification of a wide variety of positions, development of recommendations for new or revised classification titles, series or pay adjustments, preparation of classification specifications for a variety of positions and development of new or revised minimum qualification standards for various classifications. You advise departmental and personnel officials on appropriate classifications in projected major reorganizations, classification criteria at various grade levels, appropriate pay determinations in non-routine personnel actions, and related salary administration information.

The City of Opa-Locka Civil Service/Personnel Board (Board) is tasked with the authority to (1) advise the city commission and the city manager on issues concerning personnel administration; (2) advise and assist the city manager in fostering the interest of institutions of learning, civic, professional and employee organizations in the improvement of personnel standards in the

municipal service; (3) hear appeals in case any officer or employee in the classified service is suspended, reduced or removed, and report in writing to the city manager its findings and recommendations; and (4) perform such other duties with reference to personnel administration, not inconsistent with the charter, as the city commission may require by ordinance. Section 2-533, City of Opa-Locka Code. You would be employed as the clerk to the Board and would perform clerical tasks as needed to further the administration of Board duties such as drafting and compiling Board meeting minutes.

You advise that you will conduct your outside employment outside of your County hours. Your work would not require the use of any equipment or resources which you use in your County employment, nor would you work with the same people or similar entities that you currently work with in your County employment. Lastly, you advise that in your County duties you have no oversight of, authority over, or involvement with your outside employer (i.e. the City of Opa-Locka or the Civil Service/Personnel Board).

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a clerk for the Civil Service/Personnel Board for the City of Opa-Locka.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In consideration of your inquiry we must look at several factors, the first of which is whether there are similarities in your duties as a HR Personnel Services Special for HR and your position as a clerk for the Civil Service/Personnel Board for the City. In this instance, while it seems that the positions would require to you utilize a similar knowledge base involving personnel administration, there is no indication that your position as a clerk with the Board would require the use of your HR skills. However, even if your position would require you to utilize a similar

knowledge base there is no indication that a prohibited conflict of interest exists. *See* INQ 21-54; INQ 21-64; and INQ 22-114.

The Ethics Commission has previously opined that a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment particularly as you have indicated that you will conduct your outside employment outside your County hours; you will not use any equipment or resources which you use in your County employment; you will not be required in your outside employment to interact with County employees; you will not work with the same people or similar entities that you currently work with in your County employment; and your County duties do not give you or your department oversight or authority over your outside employer. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment does not in and of itself create a conflict of interest. *See* INQ 20-43.

Moreover, the Ethics Commission has previously opined that a Parking Attendant Assistant Supervisor does not have a conflict of interest regarding his employment at the County and his outside employment as a municipal Parking Enforcement Officer, because his outside employment would not impair his independence of judgment in the performance of his public duties, as he will not assist the same clients or use the same resources in both positions; his work for the City would be performed outside of his County hours; he will not interact with County employees in his outside position; and he has no involvement, oversight, supervision, or authority over the City, its staff, or its traffic enforcement operations in his County position. *See* INQ 22-31.

Nevertheless, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment in order to avoid a conflict:

- 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 shall not engage in activities that relate in any way to your outside employment during regular business 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 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; INQ 19-123; INQ 20-43.
- 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, for the benefit of the City or the City Civil Service/Personnel Board. *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 City, or the City Civil Service/Personnel Board. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent the City or the City Civil Service/Personnel Board before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for the City/Board, it is important to note that you would be prohibited from doing any such activities.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County’s Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.