



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Manuel “Manny” Sarria
Assistant Director
Miami-Dade County Homeless Trust

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-51, Section 2-11.1(g), Exploitation of official position prohibited.

DATE: April 19, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding a possible conflict of interest based on the potential employment by your agency of an individual with whom you had a past working relationship and with whom you maintain a friendship.

Facts

The Miami-Dade County Homeless Trust (“HT”) is responsible for the oversight, planning, and operations of the Miami-Dade County Community Homeless Plan, the goal of which is to end homelessness. The HT’s duties and responsibilities include administration of the local one-percent Food & Beverage tax proceeds dedicated to assisting persons who have become or are about to become homeless.¹

You advised that you are an Assistant Director of the HT, and that your duties primarily concern the supervision of all compliance and data-collection/analysis functions at the HT. The HT is currently undergoing a hiring process for the position of Business Analyst. The job responsibilities of the Business Analyst will primarily concern holding service providers accountable by evaluating service provider performance, crafting performance improvement plans for service providers, and improving service provider performance through cross-trainings to share effective

¹ See *About Us*, HOMELESS TRUST MIAMI-DADE COUNTY, <https://www.homelesstrust.org/homeless-trust/about-us/home.page> (last visited Apr. 14, 2023).

techniques used by successful service providers. The position of Business Analyst will report directly to you, and you will be responsible for conducting the annual performance evaluations of the person hired into the position.

You advised that one of the applicant finalists for the position of Business Analyst is a person known to you. You have known the applicant in question for many years, and you met her when you were both employed by Citrus Health Network. Specifically, you advised that you were employed as the Director of Housing at Citrus Health Network, and she was an Assistant Administrator working under your supervision for approximately two (2) years. You further advised that, during that time and afterward, you developed a close social relationship (i.e., friendship) with the applicant and her spouse. Additionally, you advised that you engaged in regular pastimes with the applicant's spouse, such as fishing and golfing, and that you and your spouse would socialize with the applicant and her spouse. You advised that, since the 2020 global pandemic, these regular social interactions have generally ceased, but that you still maintain a friendly relationship with the applicant and her spouse. Finally, with regard to the current hiring process for the position of Business Analyst, in which she is a candidate, you advised that were the applicant to be hired into the position, you are confident that you would be able to treat her fairly and you would neither favor nor disfavor her in relation to the other individuals who you supervise.

Issue

Whether there is a prohibited conflict of interest that would prevent you from supervising and/or conducting job performance reviews of a subordinate with whom you have maintained a friendship.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") does not explicitly address nepotism. *See* RQO 01-78; INQ 22-139; INQ 22-89; INQ 22-03.

However, Section 2-11.1(g) of 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. This section has been interpreted to mean that County employees must avoid any action hiring, promoting, or advocating for the advancement of an *immediate family member*. *See* INQ 22-89 (citing RQO 99-24); INQ 17-233. This section also prohibits any situation where a County employee provides some special hiring privilege to someone with whom they have a special relationship. *See* INQ 18-148.

In practice, no prohibited conflict of interest prevented a Miami-Dade County Commissioner from hiring her cousin's husband as her Chief of Staff. *See* RQO 01-78. Additionally, there was no prohibited conflict of interest when the Village Manager of North Bay Village sought to hire a distant relation as Assistant Village Manager, so long as the hiring was based on objective factors and not the familial connection. *See* INQ 18-148.

Furthermore, no prohibited conflict of interest prevented a Construction Manager with the Miami-Dade County Internal Services Department (“ISD”) from overseeing a project where the County vendor involved in the project was owned and operated by a personal friend of the Construction Manager. *See* INQ 17-161. However, the ISD Construction Manager was advised to discuss the matter with his supervisors to determine whether there were any reasons to reconsider his authority over the project in light of the paramount importance of maintaining integrity and fairness in the County procurement process. *Id.*

Here, it does not appear that any prohibited conflict of interest would arise from your supervision of the applicant in question if she is hired by the Director of the HT into the position of Business Analyst because you do not have any familial relationship with her and you advised that you would otherwise supervise her as you would supervise any other employee. *See* INQ 18-148; INQ 17-161. If you believe that there may still be a conflict of interest that would prevent you from being able to supervise the applicant in question fairly and equitably, then you should discuss the matter with your supervisors and contact the Miami-Dade County Human Resources Department (“HR”)² to reconsider your duties or consider a delegation of your authority over the Business Analyst position. *See* INQ 17-161.

Opinion

Based on the facts presented here and discussed above, you would not have a prohibited conflict of interest that would prevent you from supervising the applicant in question if she is hired by the Director of the HT into the position of Business Analyst. *See* RQO 01-78; INQ 18-148; INQ 17-161. However, if you do not think that you can fairly and equitably supervise the applicant, then you are strongly encouraged to review this matter with your HT supervisors and the Miami-Dade County Human Resources Department to determine whether your responsibilities should be reconsidered or your authority over the Business Analyst position delegated to another.

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 the HT or under state law. Questions regarding possible conflicts based on HT directives should be directed to the HT, or to 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/>.

² You advised that you have already corresponded with HR and they advised via e-mail that, since you already disclosed your connection with the applicant and recused yourself from the interview and selection process as it relates to her interview and selection as a finalist for the position of Business Analyst, then if she is hired you can proceed with the remainder of the hiring process as you would with any other applicant.

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.