



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Gladys Duran
Advisory Board Member
Miami-Dade County Addiction Services Board

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-61, Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(v), Voting Conflicts.

DATE: May 23, 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 potential outside employment.

Facts

You have submitted an inquiry concerning whether a conflict of interest would exist were you, a member of the Miami-Dade County Addiction Services Board (“ASB”), to engage in outside employment as a Grant Reviewer for the Substance Abuse and Mental Health Services Administration (“SAMHSA”).

You currently serve as a Board Member on the ASB. The ASB is a Miami-Dade County advisory board. *See* Miami-Dade County Code § 2-421. The Miami-Dade Board of County Commissioners (“BCC”) gave the ASB the following duties and responsibilities: (1) assist in the establishment, operation, and oversight of a central intake system to access addiction therapy; (2) serve in an advisory capacity to the BCC concerning substance abuse prevention and treatment services in the County; (3) study and review of all existing substance abuse prevention and treatment services in the County; (4) make recommendations on the administration and distribution of monies directed to substance abuse prevention and treatment services; (5) make recommendations on the administration and distribution of non-designated trust funds held for substance abuse prevention and treatment services; (6) make recommendations on the coordination, organization, utilization, and implementation of substance abuse prevention and treatment services, including public education on prevention and treatment; (7) work with the existing providers of addiction treatment

and care and make recommendations to these groups about the County’s needs; (8) recommend to the County Mayor and the BCC ordinances that will aid the ASB in carrying out its mission; (9) submit an annual report to the County Mayor and the BCC; and (10) accept grants and donations on behalf of the County from foundations and others for the purpose of carrying out the above listed functions, subject to approval by the BCC. *See* Miami-Dade County Code § 2-424.

You are currently employed as a Curriculum Support Specialist with the Miami-Dade County Public Schools (“M-DCPS”). As a Curriculum Support Specialist, you advised that your primary responsibilities are to support school counselors in the area of mental health and substance abuse among youth and provide support and guidance district-wide on issues related to lesbian, gay, bisexual, transgender, and queer (“LGBTQ+”) youth.

You advised that you wish to engage in outside employment as a Grant Reviewer for SAMHSA. SAMHSA is an agency within the United States Department of Health and Human Services and its mission is “to lead public health and service delivery efforts that promote mental health, prevent substance misuse, and provide treatments and supports to foster recovery while ensuring equitable access and better outcomes.”¹ A review of SAMHSA’s publicly available records, as well as County records, reflects that the County currently receives grant funds from SAMHSA directly, as well as on behalf of the Eleventh Judicial Circuit Court. First, pursuant to Miami-Dade County Resolution R-501-20, the BCC authorized the County Mayor to apply for an receive grant funds in the amount of \$2,010,417.00 for the Miami-Dade County Minority AIDS Initiative.² Second, pursuant to Miami-Dade County Resolution R-693-21, the BCC authorized the County Mayor to act as fiscal agent for the Eleventh Judicial Circuit Court to apply for SAMHSA grant funds in the amount of \$625,000.00 for the Miami-Dade County Mental Health Awareness Training for Criminal Justice Stakeholders Project.³ Third, pursuant to Miami-Dade County Resolution R-585-19, the BCC authorized the County Mayor to act as fiscal agent for the Eleventh Judicial Circuit Court to apply for SAMHSA grant funds in the amount of \$2,000,000.00 for the Miami-Dade County Opioid Response Partnership Expansion Project.⁴ Fourth, pursuant to Miami-Dade County Resolution R-492-18, the BCC authorized the County Mayor to act as fiscal agent for the Eleventh Judicial Circuit Court to apply for SAMHSA grant funds in the amount of \$2,000,000.00

¹ *Who We Are*, SAMHSA, <https://www.samhsa.gov/about-us/who-we-are> (last visited May 16, 2023).

² This project is anticipated to last through September 2024. *See FL Discretionary Funding Fiscal Year 2019*, SAMHSA, <https://www.samhsa.gov/grants-awards-by-state/FL/discretionary/2019/details?page=11> (last visited May 16, 2023).

³ This project is anticipated to last through October 2025. *See FL Discretionary Funding Fiscal Year 2021*, SAMHSA, <https://www.samhsa.gov/grants-awards-by-state/FL/discretionary/2021/details?page=2> (last visited May 16, 2023).

⁴ This project is anticipated to last through May 2024. *See FL Discretionary Funding Fiscal Year 2019*, SAMHSA, <https://www.samhsa.gov/grants-awards-by-state/FL/discretionary/2019/details?page=11> (last visited May 16, 2023).

for the Miami-Dade Adult Drug Court Service Capacity Expansion Project.⁵ Finally, pursuant to Miami-Dade County Resolution R-266-18, the BCC authorized the County Mayor to act as fiscal agent for the Eleventh Judicial Circuit Court to apply for SAMHSA grant funds in the amount of \$2,125,000.00 for the Miami-Dade County Dependency Drug Court Response to Family Treatment Needs Project.⁶

With regard to your proposed work for SAMHSA as a Grant Reviewer, you stated that your primary responsibility will be to review applications for discretionary grants. Specifically, you will be expected to provide written and oral comments based on your professional knowledge, provide subject-area expertise, interact and engage in discussions with other Grant Reviewers, and maintain confidentiality regarding proprietary information and the grant applications.⁷ You advised that you will be compensated approximately \$60.00 per completed grant application review. You further advised that your proposed outside employment will only occur outside of the times/hours that you are expected to perform your duties as an ASB Board Member. You advised that you do not expect that you will be required to encounter the same or similar people or entities in your outside employment as in your County position because reviewers will not be asked to review any grant applications from the State in which they reside. You advised that your County position does not involve the recruitment or management of County vendors or contractors. You advised that the only resource you anticipate using in your proposed outside employment is your knowledge and experience. However, you further advised that your County position does not give you access to non-public information that is, or could be, relevant to your potential outside employment.

Finally, you advised that as an ASB Board Member, you have not had occasion to discuss or cast a vote regarding any grant proposals submitted by Miami-Dade County to SAMHSA.

Issue

Whether any prohibited conflict of interest may exist between your County service and your proposed outside employment as a Grant Reviewer for SAMHSA.

Analysis

Your inquiry primarily raises questions under two sections of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), as discussed below.

⁵ This project is anticipated to last through September 2023. See *FL Discretionary Funding Fiscal Year 2019*, SAMHSA, <https://www.samhsa.gov/grants-awards-by-state/FL/discretionary/2019/details?page=11> (last visited May 16, 2023).

⁶ This project is anticipated to last through September 2023. See *FL Discretionary Funding Fiscal Year 2019*, SAMHSA, <https://www.samhsa.gov/grants-awards-by-state/FL/discretionary/2019/details?page=11> (last visited May 16, 2023).

⁷ See *How to become a SAMHSA Grant Reviewer*, SAMHSA, <https://www.samhsa.gov/grants/review/grant-review-opportunities#requirements> (last visited May 16, 2023).

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

The County Ethics Code prohibits County advisory personnel from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j); *see also* section 2-11.1(b)(4) (the term “advisory personnel” refers to “members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners”).⁸

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. Several factors are considered to determine whether a potential conflict of interest exists between an individual’s County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the official has decision-making authority over the same subject matter that the outside employment concerns; whether the official solicits business or customers in the same area over which he or she has jurisdiction; whether the official will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the official serves funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 21-66. Furthermore, the County Ethics Code generally does not prohibit outside employment with a County vendor so long as the official is not involved with the vendor’s contract. *See* INQ 22-143; INQ 17-194.

In the past, a Miami-Dade County Commissioner did not have a prohibited conflict of interest in his proposed outside employment as Chief of External Affairs for the nonprofit entity Children of Inmates (“COI”), even though COI primarily received funding from The Children’s Trust (“TCT”) – a Miami-Dade County entity – because TCT funding resolutions are not reviewed or approved by the BCC and because he would not engage in outreach or funding solicitation activities in Miami-Dade County. *See* INQ 21-66. Additionally, a Project Administrator for the Miami-Dade County Department of Cultural Affairs (“DOCA”) did not have a prohibited conflict of interest that prohibited her from applying for a competitive commissioned artistic project from the Miami Theater Company – even though the Miami Theater Company received grant funding from DOCA – because the Project Administrator had no involvement or oversight of the grant agreement between DOCA and the Miami Theater Company and the grant money would not be used to fund the commission for the artistic project to which she was applying. *See* INQ 17-194.

Here, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment that you are seeking to engage in will impair your independence of judgment as a Board Member of the ASB.** This is because there does not appear to be overlap between your public duties and your anticipated responsibilities as a Grant Reviewer for SAMHSA: your proposed outside employment will be performed outside of your County hours;

⁸ *See generally* Miami-Dade County Administrative Order 7-1, which provides that it is County policy that “that public employees avoid any and all situations that represent, or appear to represent, conflicts between their personal interests and their public duties.” *See also* INQ 21-66.

you will not come into contact with the same persons or entities in your proposed outside employment who are involved in your County work because you will only be asked to review grant applications from outside of Florida; you will not use the same or similar resources in your proposed outside employment except your own general experience and skills; and you do not have access to non-public information as part of your County position that is or could be relevant to your proposed outside employment. *See* RQO 17-01. Furthermore, while the County receives a significant amount of grant funding from SAMHSA, as detailed above, you advised that you have not had any involvement in or oversight of any County grant applications to SAMHSA in your County position as a Board Member of ASB. *See* INQ 21-66; INQ 17-194.⁹

B. Section 2-11.1(v) – Voting Conflicts

The County Ethics Code provides that no person who is considered County advisory personnel:

shall vote on any matter presented to an advisory board . . . on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

County Ethics Code § 2-11.1(v). Accordingly, for a voting conflict to exist under Section 2-11.1(v) of the County Ethics Code, both prongs must be met. *See* RQO 07-49; INQ 20-73.

In the past, a Board Member of the Miami-Dade HIV/AIDS Partnership, a County Advisory Board, could vote on funding recommendations regarding a service category so long as the Board Member did not work for an outside employer that is the sole provider in said category and the funding recommendation did not designate amounts or percentages among various providers in a particular service category. *See* RQO 05-50. However, a Board Member may not vote on funding recommendations that directly affect the member's employer or an entity in which he or she has a financial interest. *See id.*

Here, as a Grant Reviewer for SAMHSA, you would have a designated relationship with SAMHSA – employee. However, it does not appear that SAMHSA would appear before the ASB; rather, it would be representatives of the County preparing a grant application to request SAMHSA

⁹ *But see* Section 112.313(7)(a), Florida Statutes, providing that:

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, any agency of which he or she is an officer or employee

In light of this provision of Florida law, you are strongly encouraged to seek an opinion regarding your proposed outside employment from the Florida Commission on Ethics.

funds that could conceivably come before the ASB. Furthermore, you would not otherwise be personally directly affected were a proposal to seek grant funds *from* SAMHSA were to come before the ASB because SAMHSA would neither benefit nor face a detriment from such a grant request. Accordingly, the County Ethics Code would not prohibit you from voting on a proposal to request grant funding from SAMHSA were it to come before the ASB. *See* County Ethics Code § 2-11.1(v); RQO 07-49; RQO 05-50. However, prior to casting a vote on such a matter, were it to come before the ASB, you should consult with your SAMHSA supervisor whether any federal rule or regulation would limit your ability to vote.

Opinion

Based on the facts presented here and discussed above, you would not have a prohibited conflict of interest in your proposed outside employment as a Grant Reviewer for SAMHSA. *See* RQO 17-03; INQ 21-66; INQ 17-194. Additionally, you would not have a prohibited conflict of interest if a proposal to request a grant from SAMHSA on the part of Miami-Dade County were to come before the ASB. *See* INQ 20-114.

However, the Commission on Ethics strongly recommends that you abide by the following limitations regarding your proposed outside employment with SAMHSA:

- You may not engage in activities that relate in any way to your proposed outside employment during your scheduled work with ASB (including phone calls, text messages, e-mails, or other communications) and you may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with your proposed outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 21-66; INQ 17-194.
- You may not exploit your County position to secure special privileges or exemptions for yourself and/or for SAMHSA and/or its grant or service recipients. *See* County Ethics Code 2-11.1(g). *See* INQ 21-66.
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County position to derive a personal benefit, or for the benefit of SAMHSA. *See* County Ethics Code Section 2-11.1(h).
- You may not represent SAMHSA before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of your potential activities as a Grant Reviewer for SAMHSA, it is important to note that you would be prohibited from doing any such activities on behalf of SAMHSA.
- **You must file a sworn statement disclosing your employment with SAMHSA with the Miami-Dade County Clerk of the Court/Board.** *See* County Ethics Code § 2-11.1(f); INQ 17-194.

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 ASB or under state law. Questions regarding possible conflicts based on ASB directives should be directed to ASB staff or the County Attorney'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.