



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Howard D. Moore
Bus Operator
Miami-Dade Department of Transportation and Public Works

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-64, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: May 30, 2023

CC: All COE Legal Staff; William Young, Business Developer, Tools for Change

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning an application to participate in the federally funded Micro Loan Program administered by the Black Economic Development Coalition, Inc., doing business as Tools for Change, on behalf of the Miami-Dade County Public Housing and Community Development Department.

Facts

Mr. Howard D. Moore is employed by the Miami-Dade Department of Transportation and Public Works (“DTPW”) as a Bus Operator. Mr. Moore’s job responsibilities primarily involve operating a public bus. His DTPW duties do not include any oversight or administration of the Micro Loan Program.

Mr. Moore owns and operates a Florida Limited Liability Company named HD Moore Enterprises, LLC (“HDME”), which provides a scouting and referral service that matches truck drivers with freight to haul. Mr. Moore is the owner, operator, and Chief Executive Officer (“CEO”) of HDME. HDME derives income through a five to ten percent cut of the commission each truck driver gets for successfully hauling the freight. Mr. Moore would like HDME to participate in the Micro Loan Program administered by Tools for Change on behalf of the County.

The Micro Loan Program is a federally funded economic development program operated by Miami-Dade County as part of its Community Development Block Grants (“CDBG”) Program.

See Miami-Dade County Resolution No. R-696-22. Specifically, the Miami-Dade County Public Housing and Community Development Department (“PHCD”) administers Miami-Dade County’s CDBG Program, which distributes funds received from the United States Department of Housing and Urban Development through not-for-profit community development financial institutions (“CDFI”). See *CDBG booklet*, p.5, FY 2023 CDBG, HOME AND ESG REQUEST FOR APPLICATIONS (RFA), available at <https://www.miamidade.gov/global/housing/requests.page> (last visited May 26, 2023). The Black Economic Development Coalition, Inc., a Florida not-for-profit corporation doing business as Tools for Change and a certified CDFI, is one of two not-for-profit entities that administers the Micro Loan Program on behalf of PHCD. See Miami-Dade County Resolution No. R-696-22; *About Tools for Change*, TOOLS FOR CHANGE, <https://tfcmiami.org/about/> (last visited May 26, 2023). The purpose of the Micro Loan Program is to assist small businesses with capacity-building and support and to foster economic development in low- and moderate-income communities. See *CDBG booklet* at p.21.

Issue

Whether there is a prohibited conflict of interest that would prevent HDME, Mr. Moore’s privately owned business, from accepting a loan from the Micro Loan Program.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Outside Employment

Work conducted for HDME by Mr. Moore constitutes outside employment, as defined by the County Ethics Code. See INQ 14-213 (providing personal services to one’s own privately owned business constitutes outside employment). The County Ethics Code prohibits County employees 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). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder 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.” Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. See INQ 23-17; INQ 21-27.

Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that Mr. Moore engages in through HDME would impair his independence of judgment in the performance of his County duties as a Bus Operator with DTPW. This is because there is no overlap between his public duties and his outside employment: his outside employment will be performed outside of his County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as used in his County work;

and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment as the owner and operator of HDME. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); INQ 23-17 (Section Chief of the Miami-Dade County Internal Services Department's Small Business Development Division who owned and operated a private catering company did not have a prohibited conflict of interest in his outside employment while seeking to participate in the Micro Loan Program).

However, County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee's department. *See* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. **Accordingly, this memorandum does not grant permission to engage in outside employment. Mr. Moore must obtain permission to engage in outside employment with HDME yearly from his department director. Given that he is a full-time employee, he must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis.**¹

B. Micro Loan Program

Upon obtaining permission to engage in outside employment with HDME, then HDME **may accept the funds from the Micro Loan Program**, so long as DTPW is not involved in any way in processing or administering the loan. This includes the condition that Mr. Moore may not participate in determining or awarding the loan. Additionally, none of his job responsibilities or job descriptions may require him to be involved in the loan in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

C. Lobbying

Mr. Moore may not lobby the County. In this case, it means that Mr. Moore may not contact anyone within the County in an attempt to influence a decision about HDME's application for funds through the Micro Loan Program. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that Mr. Moore may not use his County position to secure any special privilege or exemption with respect to HDME's application to, and ultimate participation in, the Micro Loan Program, or to any other loan or grant program to which HDME or Mr. Moore is applying.

¹ Mr. Moore can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

Opinion

Based on the facts presented here and discussed above, HDME's participation in the Micro Loan Program administered by Tools for Change on behalf of PHCD **does not appear to give rise to any prohibited conflict of interest.** *See* INQ 23-17.

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.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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.