



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jose Mascorro
Director, Public Housing Division (Development)
Miami-Dade County Public Housing and Community Development Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-79, Section 2-11.1(j), Conflicting employment prohibited.

DATE: June 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 proposed outside employment.

Facts

You are currently employed by the Miami-Dade County Public Housing and Community Development Department (“PHCD”) as the Director of PHCD’s Development Division. Your job duties primarily include overseeing and directing the redevelopment of public housing units in Miami-Dade County. You elaborated that, by redevelopment you mean the renovation of current public housing, the demolition and reconstruction of current public housing, as well as the construction of new public housing. As part of this work, you oversee and direct County staff, as well as collaborate with stakeholders – meaning public housing residents, community members, County Commissioners, and officials with the United States Department of Housing and Urban Development (“HUD”) – regarding the redevelopment of existing public housing units in Miami-Dade County. Your responsibilities include the supervision of County staff involved in the solicitation of private developers, contractors, and professional service providers (architects, engineers, etc.).

You advised that you wish to engage in outside employment as an independent consultant with Azteca Economic Development and Preservation Corporation (“Azteca”). Azteca is a tax-exempt Texas corporation whose mission is to provide affordable and safe housing and help area residents

become self-sufficient in historic Barrio Azteca of Laredo, Texas.¹ You advised that Azteca is not a County vendor and a records search indicated that it is not registered as a County vendor. You further advised that you will not have any ownership interest in Azteca as part of your work for them.

With regard to your work for Azteca, you stated that your primary responsibilities as an independent consultant will be related to property management operations and program compliance. Your services will include advice, suggestions, recommendations, and review of day-to-day operations, policy development/amendment, and program compliance regarding Azteca's HUD Project Based Rental Assistance Agreement. You further advised that the work will occur remotely and that it will occur outside of the time/hours that you are expected to perform your duties as the Director of PHCD's Development Division. You further advised that you will not encounter the same or similar people or entities in your proposed outside employment as you encounter in your County employment because your work will be for a non-profit entity doing business outside of the State of Florida. You also advised that your position with PHCD does not give you access to non-public information that is, or could be, relevant to your proposed outside employment, and you advised that you will not use the same or similar resources for your proposed outside employment as those that are used in your County work beyond your working knowledge and experience. Furthermore, you advised that, while your position with PHCD involves the supervision of County staff who are involved in the procurement of vendors, you are unaware of any County vendors working on projects for PHCD who also operate in the Texas market where your proposed outside employer operates.

Finally, you advised that there may be other Texas-based non-profit affordable housing corporations with whom you may also seek employment as an independent consultant. You advised that they would be similarly situated to Azteca and that your answers in relation to Azteca would equally apply to these other potential outside employers.

Issue

Whether any prohibited conflict of interest may exist between your County employment and your proposed outside employment as an independent consultant with Azteca or similarly situated non-profit affordable housing corporations operating outside of the State of Florida.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("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); *see also* section 2-11.1(k). 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."

¹ *See About Us*, ABOUT US, <https://www.aedpc.org/index.php/about-us> (last visited June 22, 2023).

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. 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* RQO 16-02; RQO 00-10; INQ 13-28.

Multiple factors are considered when evaluating whether outside employment is conflicting, including similarity of duties with the employee's County duties, contact with the same or similar entities in both the employee's County position and proposed outside employment, overlapping work hours, use of County resources in the outside employment, and the management of County vendors who are also involved in the proposed outside employment. *See* RQO 17-01. However, the 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 12-07; RQO 04-168; RQO 00-10) (noting that a County employee can engage in outside employment with similar duties and functions so long as he or she abides by certain limitations). Furthermore, the use of an acquired knowledge base in outside employment for a privately owned company also does not, in and of itself, create a conflict of interest. *See* INQ 20-43 (a firefighter/emergency medical technician working for the Miami-Dade Fire Rescue Department could engage in outside employment as the Chief of the Tavernier Volunteer Fire Department).

In practice, the Commission on Ethics has held that a Geographic Information System Database Asset Manager for the then-extant Miami-Dade County Parks Department could engage in outside employment providing financial analyses to private developers of affordable housing so long as he did not work for any private developers with whom he interacted in his County position, none of the private developers contracted with his employing department, and he did not meet with any County staff regarding funding for the private developers. *See* RQO 11-30. As another example, the Commission on Ethics opined that a Liability Claims Adjuster for the Risk Management Division of the Internal Services Department could engage in outside employment as a private risk management consultant so long as he did not do work that conflicted with his County employment, noting that he already avoided working in claims settlement in order to avoid a real or apparent conflict of interest. *See* RQO 12-07.

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 would impair your independence of judgment as Director of the Development Division for PHCD.** This is because there is no prohibited overlap between your public duties and your proposed outside employment for Azteca or similarly situated non-profit affordable housing corporations operating outside of the State of Florida: your proposed outside employment will be performed outside of your County hours; you will not come into contact with the same persons or entities involved in your County work due to the remote nature of your outside employment (occurring in Texas); you will not use the same resources in your proposed employment as used in your County work beyond your own knowledge and experience; you will not have access to non-public information as part of your County work that could be relevant to your proposed outside employment; and no County vendors who do

business with PHCD will be involved in your outside employment. *See* RQO 17-01; RQO 11-30; INQ 20-43. Furthermore, any similarities in the services that you provide to PHCD and that you will provide to Azteca and/or other similarly situated entities doing business outside of the State of Florida would not preclude you from engaging in the proposed outside employment so long as you abide by the necessary limitations delineated below. *See* INQ 22-26 (noting that the similarity between County employment as an elevator inspector and private employment as an elevator inspector would not, by itself, prohibit the outside employment with sufficient limitations imposed);² INQ 20-43.

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest in your proposed outside employment as an independent consultant for Azteca or similarly situated non-profit affordable housing corporations doing business *outside* of the State of Florida. *See* RQO 11-30; INQ 20-43. In the future, if you seek to engage in any outside employment with a non-profit affordable housing corporation doing business *within* the State of Florida, you should request an opinion specific to that proposed outside employment.

Furthermore, the Commission on Ethics strongly recommends that you abide by the following limitations and that such limitations be imposed by your supervisor(s) if they grant you permission to engage in your proposed outside employment with Azteca and/or similarly situated non-profit affordable housing corporations doing business outside of the State of Florida:³

- **You may not engage in activities that relate in any way to your outside employment during your scheduled work hours (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 outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- You may not exploit your County position to secure special privileges or exemptions for yourself and/or for Azteca and its clients. *See* County Ethics Code 2-11.1(g).
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of Azteca or its clients. *See* County Ethics Code Section 2-11.1(h).

² Note, the Commission on Ethics ultimately opined that an elevator inspector employed by Miami-Dade County could not engage in his proposed outside employment as a private elevator inspector because the employee's County department would be responsible for evaluating work done by his proposed outside employer. *See* INQ 22-26.

³ Insofar as the restrictions discussed in this opinion refer specifically to Azteca, those same restrictions would apply equally to any future potential outside employer for whom you may work that is a non-profit affordable housing corporation similarly situated to Azteca.

- You may not represent Azteca or its clients 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 an independent consultant for Azteca, it is important to note that you would be prohibited from doing any such activities on behalf of Azteca or its clients.

- You must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director, and **you must file an Outside Employment Statement⁴ with the County’s Elections Department by noon on July 1st of each year for the prior year’s outside employment regardless of whether you made a profit or not in your outside employment.** *See* County Ethics Code Section 2-11.1(k)(2).

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

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.

⁴ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.