



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Julio Mesa, Construction and Maintenance Supervisor, Miami Dade County
Parks, Recreation, and Open Spaces Department

Enrique Gaston, Infrastructure and Construction Division Chief, Miami Dade
County Parks, Recreation, and Open Spaces Department

FROM: Etta Akoni, Staff Attorney
Miami Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-80, Conflicting/Outside Employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: June 29, 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 a Construction and Maintenance Supervisor for the Miami-Dade County Department of Parks, Recreation, and Open Spaces (“PROS”) in the Zoo Miami Division. You would like to engage in outside employment as a Laborer for the Zoo Miami Foundation.

As a Construction and Maintenance Supervisor, you supervise the Trades section of Zoo Miami, which is responsible for all the maintenance functions at Zoo Miami. This includes carpenters, welders, plumbers, electricians, mechanics, HVAC techs, and heavy equipment operators. You organize, schedule, and review all maintenance work at Zoo Miami. You direct Trades staff in the repairs of Zoo Miami facilities. You manage staff material orders, schedules, and payroll. You maintain the work order database of requests and work performed.

Zoo Miami Foundation (ZMF), formerly Zoological Society of Florida, is the private non-profit support organization for Zoo Miami Founded in 1956. While Miami-Dade County operates and maintains Zoo Miami, ZMF, backed by loyal Zoo Miami Supporters, allows Zoo Miami to continue mission-driven initiatives and zoo enhancements to encourage an appreciation for the world’s wildlife to conserve it for future generations. ZMF operates robust Learning Experience programs, supports vital conservation initiatives, and supplements key capital projects that bolster

animal welfare and guest experiences at Zoo Miami. ZMF has separate staff but there is occasional interaction with Zoo Miami employees since both ZMF and PROS Zoo Miami Division are located at Zoo Miami. You indicate that your Zoo Miami job requires that you interact with ZMF staff, potentially the same ZMF staff you would encounter while working for ZMF. Moreover, your supervisor, Enrique Gaston, also advised that your Zoo Miami responsibilities require your interaction with ZMF for infrastructure related issue not covered by the operating agreement between Miami Dade County and ZMF, as well as during emergencies.

As a laborer for ZMF, you would be assisting ZMF's with event logistics including setting up, running, and breaking down night events. These events would occur potentially 2 times a year. It appears that ZMF events will be held at Zoo Miami. As such, there may be some overlap in your interaction with employees that you supervise in your County position, specifically staff that may be present during ZMF events working on behalf of Zoo Miami. You further advise that you conduct your work with ZMF outside your County hours, and your work would not require the use of any equipment or resources which you use in your County employment.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a laborer for ZMF.

Analysis:

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.

The Commission on Ethics has previously held that conflicting employment would likely occur where the County employee is employed by a County vendor that services the facilities where the employee performs his or her County duties. *See* RQO 16-02; INQ 17-162; and INQ 19-31. The Commission on Ethics has also prohibited a Vizcaya Museum Security Chief from accepting part-time employment with a County vendor to provide security services at Vizcaya. *See* INQ 12-201. Further, the Commission on Ethics cautioned a municipal Parks Director from accepting appointment to a non-profit entity tasked with raising funds to support a park overseen by him in his public role due to the distinct possibility that the Park Director's efforts on behalf of the non-

profit could interfere with his independence of judgment in his public duties. *See* INQ 15-98. Similarly, in this instance, your outside employment would be with ZMF, a non-profit which directly supports Zoo Miami, the division of PROS and location over which you have authority in your current County role. *See also* INQ 23-66 (a conflict was found in the outside employment of a Facility Operations Manager for PROS, Zoo Miami Division, working as a laborer for ZMF because the position may result in interactions with his subordinates while working for ZMF which may interfere with his independence of judgment in his public position).

Other factors may be indicative of potential conflicts between an employee's County duties and his or her outside employer duties. Some of these factors include whether the County employee will come in contact with the same or similar people or entities in both his or her outside employment and in his or her County position (e.g., similar personnel, clients, suppliers, or subcontractors) and whether the employee would perform similar duties in his or her County employment and his or her outside employment.

Here, your duties between the two positions could potentially have overlap. Because your position for ZMF would require you to conduct your private duties in the same location as your public duties, this creates the possibility that you may have to interact with County employees which you supervise as a Construction and Maintenance Supervisor. These potential interactions could cause inherent conflicts resulting from your private duties, which could interfere with your independence of judgment in your public position. *See* INQ 15-98 and INQ 23-66.

Opinion:

Based on the facts presented here, we find a conflict exists between your County employment and your potential outside employment with ZMF because your private duties would include potentially routine direct interaction with employees within your supervision.

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.