



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Michelle Mosley, Stewardship Manager
Miami-Dade County Parks, Recreation and Open Spaces Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics and Public Trust

SUBJECT: INQ 2023-94, Section 2-11.1(g), Exploitation of official position prohibited; Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(k), Prohibition on outside employment.

DATE: August 8, 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 ethics issues arising from your proposed volunteer work for a nonprofit organization.

Facts

You are employed by the Miami-Dade County Parks, Recreation and Open Spaces Department (“PROS”) as a Stewardship Manager. Your responsibilities primarily include the administration of rentals and maintenance at seven PROS properties: Ron Ehmann Park, Cherry Grove Park, Briar Bay Park, Briar Bay Linear Park, Rockdale, and Florida Power and Light sites 312 and 313. Additionally, you advised that you oversee the work of one other PROS employee.

The Richmond Perrine Optimist Club, Inc., of Miami, FL (“RPOC”) is a Florida not for profit corporation. It was founded in 1971 by a group of residents of the Richmond Heights/ Perrine area who were concerned about the lack of organized sports and other youth activities in the area.¹ RPOC currently serves the youth, the poor, the elderly, the unemployed, and the disadvantaged in South Miami-Dade. You advised that RPOC has a program partnership with PROS that allows for the use of Sergeant Joseph Delancy Richmond Heights Park for sporting events sponsored by

¹ See *About Us*, RICHMOND-PERRINE OPTIMIST CLUB, <https://richmondperrineoptimist.org/about/> (last visited Aug. 3, 2023).

RPOC. Under the program partnership agreement, you advised that RPOC is permitted to use the concessions building, which consists of a kitchen, stove, and sink, to run concessions during the sporting events that RPOC sponsors. You further advised that the program partnership does not include the costs of referees for the sporting events RPOC sponsors at the park. A record search confirms that RPOC is registered as a County vendor.

You advised that you are an honorary member of RPOC due to your father's past involvement in the organization. You previously advised that you are a volunteer coach for a Pop Warner Dance team² that RPOC sponsors and that practices at Sergeant Joseph Delancy Richmond Heights Park. With regard to your coaching work, you advised that you only do so during your off hours and never at any of the parks over which you have responsibility in your County work.

You have now advised that you would like to volunteer at Sergeant Joseph Delancy Richmond Heights Park to operate the concessions there on behalf of RPOC. Specifically, you advised that you would like to help operate the concessions by manning the location and running the till, meaning you would conduct the sales transactions at the concessions. You advised that the proceeds gained from the concessions sales are used by RPOC to pay for the referees needed for the sponsored sporting events occurring at the park. You further advised that you do not collect a salary or any other type of monetary compensation for your work with RPOC.

Additionally, you advised that you own and operate a catering business under the fictitious name Bone-na-fide BBQ.³ You are the sole owner and operator of your catering business. You advised that, through this business, you intend to donate to RPOC by either paying for the referees for the RPOC sporting events or donating concessions food – chips, candy, and soft drinks – to RPOC for sale at the concessions, with those proceeds then used to pay for the referees as well as new sporting equipment.

Issue

Whether, pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), your proposed volunteer work with the Richmond Perrine Optimist Club would give rise to any prohibited conflict of interest.

Analysis

This inquiry involves several sections of the County Ethics Code, each of which is analyzed in turn below:

² Pop Warner is a national non-profit youth football, cheerleading, and dance organization. *See About Pop Warner*, ABOUT, <https://www.popwarner.com/Default.aspx?tabid=2749689> (last visited Aug. 3, 2023).

³ Florida Division of Corporations records reflect that you previously owned and operated a Florida limited liability company named Bone-na-fide Catering and Grill Services, LLC, but that that company is inactive and was administratively dissolved for failure to file an annual report in 2019.

A. Exploitation of Official Position Prohibited

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. County Ethics Code § 2-11.1(g).

For example, an Acting Assistant Director of the Miami-Dade County Community Action and Human Services Department (“CAHSD”) could serve as the volunteer chair of the board for the Haitian Women in Miami (“FANM”), even though FANM sought to rent space from a Neighborhood Service Center administered by CAHSD, without giving rise to a prohibited conflict of interest. *See* INQ 15-11. However, in order to avoid a prohibited conflict of interest, the CAHSD Acting Assistant Director could not administer the rental space, make any decisions regarding the rental of the Neighborhood Service Center, nor have any involvement in the leasing contract between CAHSD and FANM. *See id.* Similarly, the Miami-Dade County Budget Director could voluntarily serve as a Trustee for the Fairchild Tropical Botanical Garden, Inc. (“Fairchild”), a not-for-profit organization, even though Fairchild received community-based organization funding from the Miami-Dade Board of County Commissioners (“BCC”) and, as Budget Director, she was tasked with providing status reports on not-for-profits receiving BCC funding, because the Budget Director insulated herself from any involvement with the Fairchild funding agreements, did not participate in the decision to provide funding, and did not manage or oversee the funding agreements. *See* INQ 19-33.

Here, based on the facts presented and discussed above, it does not appear that your proposed volunteer work operating the concessions stand at Sergeant Joseph Delancy Richmond Heights Park during RPOC events would give rise to any prohibited conflict of interest. You advised that you do not have any involvement in the program partnership that RPOC has with PROS for the use of Sergeant Joseph Delancy Richmond Heights Park for its events. In order to avoid any potential prohibited conflict of interest, you should not have any involvement, either in your County position as a Stewardship Manager, or in your role as an honorary member of RPOC, with the program partnership, including any contract negotiation, supervision of the contract, or enforcement of the contract. *See* INQ 19-33; INQ 15-11. Furthermore, to avoid any appearance of impropriety, while operating the concessions on behalf of RPOC you should not wear any clothing or other items that might identify you as a PROS employee.

B. Prohibition on Outside Employment

The County Ethics Code provides that, “[a]ll full-time County and municipal employees engaged in any outside employment . . . shall file, under oath, an annual report indicating the source of the outside employment . . .” County Ethics Code § 2-11.1(k)(2). 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. Generally, uncompensated work for a traditional nonprofit entity is not considered outside employment. *Id.* However, a County employee who has “significant managerial responsibilities or working time commitments” with a nonprofit entity could be considered to be engaging in outside employment. *Id.*

In the past, uncompensated volunteer work for the Hope for Autism United for Soccer, Inc., a not-for-profit corporation, by the Executive Assistant to the Mayor of Hialeah did not constitute outside employment because the volunteer work consisted of weekend soccer coaching and teaching others how to coach and work with children with autism (meaning non-administrative duties) and was uncompensated and occurred outside of City work hours. *See* INQ 22-101. Similarly, uncompensated volunteer work helping members of a Girl Scout Troop obtain merit badges by an employee of the Miami-Dade County Water and Sewer Department did not constitute outside employment because the nature of the work was customarily uncompensated and occurred outside of County work hours. *See* INQ 15-71.

Here, based on the facts presented and discussed above, it does not appear that your volunteer work for RPOC, either as a dance coach or operating concessions at Sergeant Joseph Delancy Richmond Heights Park for RPOC events, would constitute outside employment. This is because: (a) you do not have any administrative responsibilities with relation to RPOC; (b) you are not responsible for the day-to-day operations of RPOC; (c) you will not receive any form of compensation for your coaching activities or for your concessions work; and (d) you do not make significant time contributions as part of your volunteer service. *See* RQO 17-03; INQ 22-101.

C. Conflicting Employment Prohibited

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.” County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. 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.

In practice, a Firefighter with the Miami-Dade County Fire Rescue Department (“MDFR”) could own and operate a catering and food truck business without giving rise to a prohibited conflict of interest. *See* INQ 22-22. Furthermore, you have previously sought guidance from this agency regarding the ownership and operation of a catering company – Randy’s Barbeque & Catering Services, LLC – which you owned and operated with your spouse, Mr. Randy Mosley. *See* INQ 13-79; *see also* INQ 13-302. You were advised that you could do so without giving rise to a prohibited conflict of interest, provided that the company did not do business with PROS. *See* INQ 13-79.

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 through owning and operating Bone-na-fide BBQ would impair your independence of judgment in the performance of your County duties as a Stewardship Manager for PROS. This is because there is no overlap between your public duties and your outside employment: your outside employment is performed outside of your regular County hours; you will not come into contact with the same persons or entities involved in your County work; you do not use the same resources in your outside employment as used in your County work; and you do not have access to non-public information as part of your County work that is, or could be, relevant to your outside employment owning and operating Bone-na-fide BBQ. *See* RQO 17-01; INQ 22-22; INQ 13-79. You are further reminded that you may not contract with PROS, either individually or through Bone-na-fide BBQ. *See* County Ethics Code § 2-11.1(c); INQ 13-302.

Furthermore, insofar as you plan to donate concessions food to RPOC in support of their mission through Bone-na-fide BBQ, the County Ethics Code does not impose any limitation on your ability to do so because there is no indication that your County position is implicated in that decision, and you are not otherwise receiving anything of value by doing so that implicates your County position. *See* INQ 13-119 (a County Commissioner could donate office space for County use without giving rise to a prohibited conflict of interest so long as he did not personally benefit from the donation).

Opinion

Based on the facts presented here and discussed above, insofar as you plan to volunteer as a coach and to operate concessions for RPOC, you will not be engaged in outside employment, as that term is used in the County Ethics Code and you will not have to annually report those activities as outside employment as required by Section 2-11.1(k)(2) of the County Ethics Code. Furthermore, those proposed activities would not give rise to any prohibited conflict of interest, so long as you abide by the restrictions discussed in this opinion, including not having any involvement with the program partnership agreement between PROS and RPOC. You are engaged in outside employment insofar as you own and operate Bone-na-fide BBQ and, therefore, **you must file an Outside Employment Statement⁴ with the County's Elections Department by noon on July 1st of each year regardless of whether you made a profit or not in your outside employment.** *See* County Ethics Code § 2-11.1(k)(2). Finally, your decision to donate funds and/or concessions food to RPOC through Bone-na-fide BBQ would not give rise to a prohibited conflict of interest.

In addition to those discussed above, a couple sections of the County Ethics Code are worth review:

- You may not appear before any County board or agency to make a presentation on behalf of or seek any benefit for yourself, Bone-na-fide BBQ, and/or RPOC. *See* County Ethics Code § 2-11.1(m)(1).

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

- 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 Bone-na-fide BBQ and/or RPOC. *See* County Ethics Code § 2-11.1(h).

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