



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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

---

### MEMORANDUM

---

**TO:** Jorge Fernandez  
Deputy Director  
Miami-Dade County Office of Management and Budget (OMB)

**FROM:** Martha D. Perez  
Temporary Staff Attorney  
Miami-Dade Commission on Ethics and Public Trust

**SUBJECT:** INQ 2024-103; Section 2-11.1(j)-Conflicting (service)

**DATE:** June 11, 2024

**CC:** All COE Legal Staff;

---

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflict of interest in your proposed service on the Greater Miami Expressway Authority (GMX).<sup>1</sup>

#### **Facts**

You are the Deputy Director for the County's Office of Management and Budget (OMB). You are responsible for the County's budget, General Obligation Bond Program, Incorporation and Annexation, and Community Redevelopment Agencies (CRAs).

To your knowledge, your job duties do not include interaction, oversight, or administration of the GMX or other County departments GMX interacts with. *See* INQ 14-282

---

<sup>1</sup> Whenever a county employee is being considered for membership on a (state) board or agency, it is prudent for the employee to seek ethics guidance prior to the appointment. *See* INQ 21-51; INQ 16-03; INQ 2024-30

You advise that OMB does not provide any funding to GMX or vice versa.<sup>2</sup>

## GMX

GMX is a state agency governed by §348.0301 through §348.0318, Fla. Stats.<sup>3</sup> The governing body of the agency consists of nine voting members comprising a volunteer Board of Directors. Except for the district secretary of the department, each (board) member must be a permanent resident of the county served by the agency.<sup>4</sup>

GMX is authorized pursuant to §348.0306, Florida Statutes, to construct expressways; borrow money, make and issue negotiable notes, bonds, refund bonds, and other evidence of indebtedness ; reimburse the counties county in which it exists for any sums expended from any county gasoline tax funds used for payment of such obligations; refund any bonds previously issued, to the extent allowable by federal tax laws, to finance or refinance an expressway system located within the geographic boundaries of the agency regardless of whether the bonds being refunded were issued by such agency, an agency of the state, or a county.<sup>5</sup>

Members of the agency shall reflect the state's interests in the transportation sector and represent the intent, duties, and purpose of the GMX, and have at least 3 years of

---

<sup>2</sup> It is your understanding that GMX is funded through the tolls on the roads it is responsible for. In fact, its revenues are primarily earned from the expressway system operations charged to customers (i.e., toll collections) See §348.0306, Fla. Stat.

<sup>3</sup> GMX serves the area within the geographical boundaries of Miami-Dade County and designated portions of Monroe County.

<sup>4</sup> Four members, each of whom must be a permanent resident of Miami-Dade County, shall be appointed by the *Governor*; the remaining members shall be appointed by the Board of County Commissioners of Miami-Dade County (BCC) and the County's Metropolitan Planning Organization (MPO) or Metropolitan Transportation Organization (TPO).

<sup>5</sup> State law renders MDX as dissolved and transfers all assets, employees, contracts, rights, and liabilities to GMX, a state agency that is not subject to any county's home rule powers. (The county ordinance asserts Miami-Dade County's home rule powers to reestablish the Miami-Dade Expressway Authority (MDX), which was abolished under state law creating the Greater Miami Expressway Agency (GMX). On May 4, 2021. MDX filed a Complaint for Declaratory Relief, Injunctive Relief, and Quiet Title against GMX on July 26, 2022. The trial judge issued final judgement declaring Miami-Dade County's 2021 ordinance valid and MDX the lawful owner of the toll facilities. GMX appealed this case, and it is now pending in the Third District Court of Appeal).

professional experience in one or more of the following areas: *finance*; land use planning; tolling industry; or transportation engineering. See §348.0304 (3)(a), Florida Statutes<sup>6</sup>

**Issue:**

Whether a prohibited conflict of interest exists between your county employment and your proposed service on the GMX.

**Discussion**

As a preliminary matter, while there is no prohibition against an appointment of a county employee to a state board, there are several factors that would need to be considered with the employee prior to such an appointment. See INQ 23-153; INQ 21-51. The following is a non-exclusive list of some of the Ethics Code provisions likely to be triggered when County employees are appointed to serve on public (state) boards:

1) Sec. 2-11.1(j) of the County Ethics Code prohibits County employees from engaging in certain activities that would impair their independence of judgment in the performance of their public duties to the County. For example, a county employee should avoid dealing in his or her county position with any issue that could foreseeably come before him or her as a member of the board and vice versa. See INQ 17-52

By its terms, Section 2-11.1(j) of the County Ethics Code applies to “other employment.” Nevertheless, historically, this agency has applied Section 2-11.1(j) of the County Ethics Code to persons concurrently serving on a public board and employed by the County. See, e.g., INQ 21-51; INQ 21-13; INQ 18-67; INQ 16-03.

The COE has previously identified several factors that are indicative of potential conflicts between a county employee’s public duties and his or her outside employment or (board) service. These include, service that is related to the county employee’s public position; service that consists of work that is similar to work performed by the [state] board or agency on which the board member serves; whether the (state) board service is likely to place the board member in situations in which private economic considerations may override the faithful discharge of his/her public responsibilities; and whether the [state] board member would have to deal in his or her County employment with any issue that could foreseeably be addressed by the member’s [state]board.

The duties of your county position do not appear to overlap with your prospective board service to the point that your independence of judgment would be affected so as to create a conflict of interest. Your prospective service at GMX is not similar or related to your county duties at OMB; your prospective board service is on a volunteer basis; and, as you

---

<sup>6</sup> Also, the members of the governing body of the agency shall not be entitled to compensation but shall be entitled to receive *per diem* and travel expenses as provided in s. 112.061. See §348.0304(6), Fla. Stat.

affirmed, you would not have to deal in your job at OMB with any issues addressed by GMX.<sup>7</sup>

2) Sec. 2-11.1(g) of the County Ethics Code prohibits county employees from using their official position to secure special privileges or exemptions for themselves or others. In practice, when a County employee is also serving on a public board, the County employee should use his or her leave time to attend any board meetings that occur during his or her regularly scheduled work hours unless his or her supervisor determines “that service on the board is directly relevant to the work, goals and mission of the employing agency, such that it would be a justifiable expenditure of the agency’s resources to support such activity.” *See* INQ 15-189.

Consequently, it is advisable to seek approval from the OMB Director to ensure that your GMX board service will not interfere with your county employment (hours, resources, etc.) *See* INQ 21-13, INQ 17-52.

3) Sec. 2-11.1(h) prohibits county employees from disclosing confidential information obtained through their official positions with the County or use such information, directly or indirectly, for personal gain or benefit. In other words, you may not have access to non-public information as part of your county position that is, or could be, relevant to your service with GMX and vice-versa.

4) Under Section 2-11.1(m)(1), a county employee may not appear before the county or any county board or agency on behalf of a third party. Consequently, you would be prohibited from appearing before the county on behalf of GMX for projects to be county-funded or any other benefits sought. *See* INQ 13-224.

We also note the following applicable state laws/ board policies:

- a) The Sunshine Law at §286.011, Fla. Stat., prohibits board members from discussing board business except at a duly noticed public meeting where the public is invited, and minutes are taken.
- b) The State Code of Ethics requires you to annually file a financial statement.
- c) As a board member, you must abide by the State Code of Ethics and the GMX Code of Ethics Policy.

### **Opinion**

Based on the information provided to us at this time, there does not appear to be a conflict of interest in your service on the GMX board and your county duties as long as you abide by the limitations discussed herein.

---

<sup>7</sup> In the event that an issue would arise in your board service which would present a conflict of interest, you shall abide by the conflict-of-interest provisions in Chapter 112, Florida Statutes (State Ethics Code) and the GMX Code of Ethics Policy.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. The State Code of Ethics shall apply to officers, employees, and consultants of the agency, and this section shall be enforced by the Commission on Ethics as part of the State Code of Ethics. *See* §348.0305(8), Fla. Stat. For additional information on state law or an opinion regarding Florida ethics law, you may contact the Florida Ethics Commission, 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.