



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jacqueline Coley, Train Operator
Miami-Dade Department of Transportation and Public Works

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

SUBJECT: INQ 2024-115; Contracting with the County, Section 2-11.1(c), County Ethics Code

DATE: June XX, 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 conflicts of interest concerning your non-profit organization contracting with the County.

Facts

You are employed by the Miami-Dade Department of Transportation and Public Works (DTPW) as a Train Operator. Your job involves driving County buses on specified routes, letting passengers on and off the trains and overall “troubleshooting.”

You are also the President of Miami Knights Optimist (“MKO”), a not-for-profit youth organization dedicated to providing sports activities and programs to inner city youth through football drills, “back to school” activities, community outreach, toy drives and other volunteer activities. ¹ As President, you advise that you oversee “everything” for

¹ MKO’s mission is to offer equitable opportunities so youth and families can thrive; offer opportunities to gain access to high quality opportunities in education, training, life skills development, future endeavors, success in athletics, self-sufficiency, and adulthood. <https://www.miamiknightsoptimist.com>

MKO. MKO applied for a permit at West Little River Park in Miami-Dade County, to conduct a Football Sports Program.²

Issue

Whether there is a prohibited conflict of interest that would prevent you or your non-profit, MKO, from applying for a permit to conduct a sports program at a county park.

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:

In accordance with Section 2-11.1(c)(4) of the County Ethics Code, “prior to submittal of a bid, response, or *application of any type* to contract with the County,” you must seek a conflict-of-interest opinion from the Ethics Commission regarding that particular County contract.

Generally, Sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County, as long as the contract does not interfere with the full and faithful discharge of the County employee’s duties, the County employee does not participate in negotiating or awarding the contract, and the County employee’s job duties will not require her to be involved with enforcing or overseeing the contract. However, the County Ethics Code prohibits a county employee from transacting business with the County department for which he or she works. Specifically, [the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, *if the employee works in the county department which will enforce, oversee, or administer the subject contract. See County Ethics Code § 2-11.1(c)(2). See e.g., INQ 23-64 (DTPW employees were permitted to contract with the County departments that provided small business grants because they did not work for those departments).*

Here, you and/or your non-profit organization-MKO- may not contract with DTPW because that is the County department that employs you. *See County Ethics Code § 2-11.1(c)(1), (2); RQO 11-29. However, you and/or MKO may participate in certain County transactions, including permit applications to PROS, so long as DTPW is not involved in any way in awarding, processing, administering, overseeing, or enforcing the resulting contract, application or permit.*³

² West Little River Park is one of the County parks managed by and under the jurisdiction of the County’s Parks, Recreation and Open Spaces Department (“PROS”).

³ *See e.g., INQ 22-18 (a correctional counselor with MDCR who owned a party and events rental company was permitted to contract with the County as long as the contract was not with MDCR or involve any oversight or administration by MDCR)*

Consequently, you may apply for a permit from PROS for MKO's football sports program at West Little River County Park.⁴ See INQ 13-158 (The County Ethics Code does not prohibit the nonprofit organization, Miami Youth Baseball Association, Inc., or its Vice-President- a County employee with MDR- from obtaining permits and contracting with the Miami Dade County Parks Department to offer activities at the County's "Brothers to the Rescue" Park)

However, please be aware of the following limitations under the County Ethics Code:

- You may not lobby the County. In this case, that means that you may not contact anyone within the County in an attempt to influence a decision about MKO's application. See County Ethics Code § 2-11.1(m)(1); and
- You may not exploit your official county position. See County Ethics Code § 2-11.1(g). This means that you may not use your county position to secure any special privilege or exemption with respect to MKO's permit application to PROS or other future transactions involving MKO.

In addition to the forementioned limitations, be aware that Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. See County's Administrative Order 7- 1.

Generally, uncompensated outside employment for a traditional nonprofit entity is not considered outside employment. However, a county employee who serves as the Executive, Director, *President*, or Manager of that nonprofit on a compensated or uncompensated basis and is *actively involved in the administration of that entity* is engaged in outside employment requiring completion of the outside employment paperwork on a yearly basis. See RQO 17-03; INQ 22-44.

Thus, your position and responsibilities as President of MKO constitute outside employment.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the employee's independence of judgment in the performance of his or her official duties, thereby creating a conflict between the employee's public duties and private interests. "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." See A.O 7-1. For example, conflicting employment can occur when a county employee encounters the same or similar persons or entities in both his County and outside employment/service; or, when County employees use County time or resources in the performance of their outside employment/service. See AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162; *see also* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting).

⁴ You may wish to contact West Little River Park Manager Jervont Jackson at (305) 694-5096, to obtain the status of your permit application.

While it appears unlikely your outside employment with your non-profit organization will impair your independence of judgment in the performance of your County duties as a Train Operator for DTPW, nevertheless, 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 an Outside Employment Statement with the County's Elections Department by July 1st of each year. See County Ethics Code Section 2-11.1(k)(2).3 Keep in mind that, 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. Accordingly, **this memorandum does not grant you permission to engage in outside employment. You must obtain permission to engage in outside employment every year from your department director.**⁵

Opinion

Based on the facts presented here, MKO may apply and obtain a permit to conduct a sports program at a county park, subject to the limitations discussed above.

This opinion is based on the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. If these facts change, or if there are any further questions, please contact the above-named Temporary Staff Attorney. 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.

⁵ The form is available online at <https://www.miamidade.gov/elections/library/forms/outsideemployment-statement.pdf>.