



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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

MEMORANDUM

TO: Dennis Mogulyan, Buyer
Miami-Dade Parks, Recreation and Open Spaces Department

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

SUBJECT: INQ 2024-116, Section 2-11.1(j), Conflicting employment prohibited.

DATE: June 24, 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 in Mr. Mogulyan's proposed outside employment.

Facts

Mr. Dennis Mogulyan is employed by the Miami-Dade Parks, Recreation and Open Spaces Department ("PROS") as a Buyer within the Procurement Division. He advised that his duties include procuring a wide range of goods and services for PROS, ranging from office supplies to large equipment such as vehicles and tractors, through pre-approved vendor pools. He also advised that all the procurement activities in which he participates are subject to approval and oversight by his managers, and he does not have the authority to approve purchases or vendor selections.

Mr. Mogulyan advised that he wishes to engage in outside employment as a Realtor and as an Uber Driver. A record check with the Florida Department of Business and Professional Regulation confirms that Mr. Mogulyan has been a registered real estate broker or sales associate since June 2021. He advised that, as a Realtor, he handles purchases, sales, and rentals of residential real estate on a commission basis and operates as an independent contractor, not an employee, working in association with The Keyes Company¹. Mr. Mogulyan advised that, to his knowledge, The Keyes Company is not a County vendor.

¹ The Keyes Company is a real estate brokerage firm operating in Florida. *See About us, Our Story*, <https://www.keyes.com/our-story/> (last visited June 18, 2024).

Mr. Mogulyan also advised that he would like to engage in outside employment as an Uber Driver with Uber Technologies, Inc.² (“Uber”). He advised that as an Uber driver, he works as an independent contractor to provide transportation services. He advised that, to his knowledge, Uber is not currently a County vendor.

With regard to his anticipated work as a Realtor and an Uber Driver, Mr. Mogulyan advised that his outside employment will occur outside the times/hours he is expected to perform his duties as a Buyer for PROS. He further advised that he does not have access to non-public information that is or could be relevant to his proposed outside employment. Additionally, Mr. Mogulyan advised that his outside employment activities do not require him to encounter similar people, vendors, or subcontractors involved in his County position.

Issue

Whether any prohibited conflict of interest may exist between Mr. Mogulyan’s County employment and his proposed outside employment as a Realtor and an Uber Driver.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“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.” County Ethics Code § 2-11.1(j); *see also* County Ethics Code § 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.”

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

² Uber is an online transportation network company that operates ride-sharing services in the United States and abroad. Uber develops, markets, and operates a mobile “app,” which allows individuals with smartphones to submit a trip request, which the software program then automatically sends to the Uber driver nearest to the consumer, giving the driver the location to pick up the customer. *See How to use the Uber app*, ABOUT, https://www.uber.com/us/en/about/how-does-uber-work/?uclick_id=9c923265-d2f6-41bf-bede-e47db82f9646 (last visited June 18, 2024)

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).

In practice, a Director of the Housing Advocacy Division of the Miami-Dade Community Action and Human Services Department could engage in outside employment as a real estate associate provided that the outside activities do not overlap with County working hours, involve any transactions related to County duties, or include clients or real estate transactions that relate to her work identifying vacant or underutilized property for the development of affordable housing. *See* INQ 23-122. Additionally, an Airport Operations Specialist from the Miami-Dade Aviation Department whose duties involved issuing security badges and conducting background checks may engage in outside employment as an Uber Driver because his duties as an Uber Driver did not overlap with his County duties. *See* INQ 18-252.

Here, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment that Mr. Mogulyan is seeking to engage in would impair his independence of judgment as a Buyer within the Procurement Division for PROS.** This is because there is no prohibited overlap between his public duties and his proposed outside employment as a Realtor and an Uber Driver, so long as he does not participate in any real estate transactions that involve or relate to his County work. There is no prohibited conflict of interest, so long as Mr. Mogulyan abides by this restriction, because there is otherwise no overlap between his public duties and his proposed outside employment: his proposed outside employment will be performed outside of his County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as used in his County work; and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment as a real estate agent. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); INQ 23-122; INQ 18-252.

Opinion

Based on the facts presented here and discussed above, Mr. Mogulyan would not have a conflict of interest in his proposed outside employment as a Realtor and an Uber Driver. In the future, if his outside employment changes or if he seeks additional outside employment, he should request an opinion specific to those circumstances.

Furthermore, the Ethics Commission strongly recommends that the following limitations be imposed on Mr. Mogulyan's permission to engage in his proposed outside employment as a Realtor and an Uber Driver:

- **He may not engage in activities that relate in any way to his outside employment during his scheduled work hours (including phone calls, text messages, e-mails, or**

other communications), and he may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with his outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.

- He may not exploit his County position to secure special privileges or exemptions for himself and/or The Keyes Company or its clients and/or Uber or its clients. *See* County Ethics Code § 2-11.1(g). **Specifically, he may not offer his or The Keyes Company's real estate services to anyone during County working hours, including co-workers, subordinates, and other County employees.** *See* INQ 19-101. **He also may not offer his services as an Uber Driver to anyone during County working hours, including co-workers, subordinates, and other County employees.** *See id.*

- He may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment to derive a personal benefit, or for the benefit of The Keyes Company or its clients, or Uber or its clients. *See* County Ethics Code § 2-11.1(h); INQ 21-60.

- He may not represent The Keyes Company and/or Uber before any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of his potential activities as a Realtor for The Keyes Company or as an Uber Driver, it is important to note that he would be prohibited from doing any such activities on behalf of The Keyes Company or Uber and their respective clients.

- He must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director, and **he must file an Outside Employment Statement³ with the County's Elections Department by noon on July 1st of each year for the prior year's outside employment regardless of whether he made a profit or not in his outside employment.** *See* County Ethics Code § 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 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/>.

³ Mr. Mogulyan can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

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.