



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Dumera Avilma, Facility Maintenance Attendant
Miami-Dade Parks, Recreation and Open Spaces Department

Beatriz Lee, Chief of Human Resources and Professional Excellence
Miami-Dade Parks, Recreation and Open Spaces Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2024-122, Section 2-11.1(j), Conflicting employment prohibited.

DATE: June 28, 2024

CC: All COE Legal Staff; LaRon Woodson, Stewardship Area Manager, Miami-Dade Parks, Recreation and Open Spaces Department

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in Mr. Dumera Avilma's proposed outside employment.

Facts

Mr. Avilma is currently employed by the Miami-Dade Parks, Recreation and Open Spaces Department ("PROS") as a Facility Maintenance Attendant. His job consists of groundskeeping duties, which include cutting grass, blowing leaves, cleaning shelters, occasionally fixing tables, and ensuring the park is safe and tidy by picking up coconut branches as needed.

Mr. Avilma would like to engage in outside employment as a Beach Attendant for Boucher Brothers. Boucher Brothers is a hospitality management company operating in South Florida, known for its specialization in extensive array of services including pool, beach, food and beverage, water sports, and team building activities.¹ Mr. Avilma's duties with Boucher Brothers would include setting up beach chairs and umbrellas and collecting rental fees for such equipment.

¹ See *About Us*, <https://business.miamibeachchamber.com/list/member/boucher-brothers-management-inc-1268> (last visited June 28, 2024).

Boucher Brothers is a County vendor. However, Mr. LaRon Woodson, PROS Stewardship Area Manager, who is Mr. Avilma's supervisor, stated that while Boucher Brothers does have a contract with PROS, Mr. Avilma does not have any role in oversight or compliance with Boucher Brothers County contract. Mr. Woodson added that, as a Facility Maintenance Attendant, Mr. Avilma's interactions with the public are slim as he is performing maintenance tasks around the park. Additionally, Mr. Avilma does not perform tasks on the beach; rather, the beach is under a beach maintenance crew.

Mr. Avilma advises that his outside employment would only occur on Wednesdays and Thursdays from 8:00 am to 5:00 pm, outside of the times/hours that he will be expected to perform his duties as a Facility Maintenance Attendant for PROS. He further advised that, as part of his proposed outside employment, he will not have any contact with PROS clientele as his work for Boucher Brothers would be limited to only the beach areas of the park. Mr. Avilma further advised that his position with PROS does not involve the recruitment or management of County vendors or contractors. He also advises that no County resources will be used for his proposed outside employment. Finally, Mr. Avilma advises that, as part of his county position, he does not have access to non-public information that is, or could be, relevant to his proposed outside employment.

Issue

Whether any prohibited conflict of interest may exist between Mr. Avilma's County employment and his proposed outside employment as a Beach Attendant for Boucher Brothers, which is a County contractor.

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.

The County Ethics Code does not prevent a county employee from engaging in outside employment with a County vendor, as long as the County employee does not have any involvement with the vendor's contract with the County. *See* RQO 16-02; INQ 20-31; INQ 18-54.

Outside employment is more likely to conflict with County employment “when the two pursuits overlap or are closely related.” INQ 16-89 (citing RQO 12-11, INQ 12-159). However, “a 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.” INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

In practice, a Stewardship Manager with PROS could engage in outside employment as a Recreation Aide with the City of Miami Gardens because his outside work for the City took place exclusively at municipal parks, not County-owned parks. *See* INQ 22-07. Thus, his outside employment was unlikely to lead him to use any equipment or resources used in his County employment, nor did either of his jobs involve working with the same clients. *See id.* Additionally, a part-time Console Security Specialist with the Miami-Dade Internal Services Department, Facilities and Utilities Management Division (“ISD-FUMD”) could engage in outside employment as a Security Officer with a County vendor providing security services to the County despite similarities between his County duties and his outside employment because he did not oversee the contract between the County and his outside employer, provided he was not assigned in his County work to the area serviced by his outside employer. *See* RQO 16-02.

Additionally, in 2017 Mr. Avilma’s then-supervisor requested an ethics opinion regarding Mr. Avilma’s outside employment with Boucher Brothers as a Rental Concession Attendant. *See* INQ 17-77. Mr. Avilma’s job duties with Boucher Brothers involved setting up beach chairs, umbrellas and collecting rental fees. *See id.* Additionally, in 2017 Mr. Avilma worked for PROS as a part-time Park Service Aide, performing routine maintenance and custodial work. *See id.* This agency’s legal staff opined that Mr. Avilma could engage in the outside employment with Boucher Brothers because: (a) his role as a Park Service Aide was confined to non-beach areas of the park, while his work for Boucher Brothers was limited to beach areas of the park; (b) he wore a distinctly different uniform while performing services for Boucher Brothers than his County uniform; and (c) he did not have any influence or decision-making authority or oversight of the contract between the County and Boucher Brothers. *See id.*

Thus, based on the information provided to us at this time, and after speaking with Mr. Avilma’s supervisor, it appears to be unlikely that the outside employment that Mr. Avilma is seeking to engage in would impair his independence of judgment in the performance of his County duties as a Facility Maintenance Attendant. This is because his public duties and his outside employment do not overlap: his 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 beyond the possibility of incidental contact with PROS clientele who traverse the park to go to the beach; 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. *See* RQO 17-01; RQO 16-02; INQ 22-07; INQ 17-77. While Mr. Avilma will be working at or near the same general location – Haulover Park – for both his

County position and his outside employment with Boucher Brothers, the nature of the roles differ because his County position requires him to be in the areas within the park, not on the beach, whereas his employment with Boucher Brothers will require him to be in and around the beach area. It is further significant that his County position does not involve any supervision, oversight, or involvement in his outside employer's County contract.

Opinion

Accordingly, based on the facts presented here and discussed above, Mr. Avilma would not have a prohibited conflict of interest in his proposed outside employment as a Beach Attendant for Boucher Brothers because his duties in each position differ with regard to their location and responsibilities, and because he has no authority, oversight, or involvement in the contract between the County and his outside employer.

Additionally, the Commission on Ethics strongly recommends that the following limitations be imposed on Mr. Avilma's permission to engage in his proposed outside employment:

- 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 Boucher Brothers. *See* County Ethics Code § 2-11.1(g). This includes soliciting business for Boucher Brothers while on duty at PROS, either by handing out business cards or informing PROS clients about Boucher Brothers and/or its services. *See* INQ 22-81; INQ 17-175.
- 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 Boucher Brothers. *See* County Ethics Code Section § 2-11.1(h).
- He may not represent Boucher Brothers 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 Beach Attendant for Boucher Brothers, it is important to note that he would be prohibited from doing any such activities on behalf of Boucher Brothers or its 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 Statement² with the County's Elections Department by noon on July 1st of each year. *See* County Ethics Code § 2-11.1(k)(2).

- He **must file a sworn statement** disclosing his outside employment and interest with the Clerk of the Court in accordance with Section 2-11.1(f) of the County Ethics Code.

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.

² Mr. Avilma can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.