



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Lt. Ernice Elie-Sturup
Miami-Dade County Corrections and Rehabilitation Department

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-141, Section 2-11.1(e), Gifts.

DATE: August 13, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your desire to solicit donations to help parents with newborns in a Neonatal Intensive Care Unit (“NICU”).

Facts

You are employed by Miami-Dade County Corrections and Rehabilitation Department (“MDCR”) as a lieutenant. You are currently on parental leave, but prior to your leave, you were assigned to the Capital Projects Construction and Management Division of MDCR.

You would like to solicit donations of hygiene products, pajamas, socks and other items to help NICU parents. You are calling this effort Jaylen’s Closet, after your son, who was in the NICU at Joe DiMaggio Children’s Hospital for two and a half weeks. You are working with Curley’s House of Style, a local nonprofit that collects food and other items for needy families and has been recognized as a 501(c)(3). You have not incorporated Jaylen’s Closet, nor have you applied for 501(c)(3) status for it. You are not compensated by Jaylen’s Closet or Curley’s House of Style.

You would like to set out collection boxes at MDCR offices and elsewhere in County government. You would also like to ask your coworkers to donate cash or goods to your effort.

Issue

Whether the Miami-Dade County Ethics Code (“Ethics Code”) permits you to solicit donations at your County place of employment, elsewhere at County facilities and from your coworkers to assist your efforts to provide hygiene supplies to parents of infants in NICUs.

Analysis

This issue implicates multiple sections of the Ethics Code, which are addressed below.

A. Section 2-11.1 (e) Gifts

Section 2-11.1(e) of the Ethics Code prohibits employees from soliciting gifts. This prohibition is broad and includes a specific prohibition on accepting any gifts offered in exchange for an official action. *See* Section 2-11.1(e)(3), Ethics Code. However, the Ethics Code specifically allows the solicitation of donations on behalf of a non-profit organization that is recognized as a 501(c)(3) under the Internal Revenue Code, as long as the employee is not compensated by the non-profit. *See* Section 2-11.1(e)(2)(g), Ethics Code. *See also* INQ 20-119 (finding a research analyst with the Auditor’s Office was permitted to solicit donations on behalf of a recognized 501(c)(3) that did not compensate him). *See also* RQO 99-43; INQ 20-119; INQ 16-93.

Employees should avoid direct, targeted solicitations of County vendors and lobbyists on behalf of non-profits, even when the general solicitation of donations is permitted, in order to avoid situations where a County vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. *See* INQ 23-45 (finding an advisor to the mayor was permitted to solicit donations on behalf of a non-profit but cautioned against any solicitations of County vendors or contractors); INQ 20-110 (finding an analyst for the Commission Auditor could solicit donations on behalf of a professional organization that was a 501(c)(3), but cautioning him not to solicit County vendors or contractors) INQ 19-96 (finding Aviation Department employees could conduct fundraising efforts on behalf of a non-profit but advising them not to solicit airport contractors directly).

Here, you are permitted to solicit donations on behalf of Curley’s House of Style, because it is a recognized 501(c)(3) that does not compensate you, and you may ask that the donations be made to Curley’s House of Style *in the name* of Jaylen’s Closet, but you may not accept cash donations (or electronic cash donations via apps like Venmo) directly. *See* INQ 12-211.

B. Section 2-11.1 (g) Exploitation

Section 2-11.1(g) of the Ethics Code prohibits employees from using their official position to obtain “special privileges or exemptions” for themselves or another. This means you cannot use your access to County facilities or your County title in your donation solicitations. For this reason, you cannot place donations boxes in County facilities. *See* INQ 21-70 (finding that any solicitation of donations on behalf of a non-profit must be outside of a County employee’s official work, “without title or connection” to the employee’s official position).

C. Section 2-11.1 (j) Outside Employment

While County employees are permitted to volunteer for non-profit causes and organizations, they are required to seek approval for outside employment if they are serving in a role that is customarily compensated, even if they are unpaid. *See* RQO 17-03. The Ethics Commission has found that 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. *See* INQ 23-47 (quoting RQO 17-03).

Supervisors may grant approval for outside employment based on Departmental policies, but only as long as the County employee’s private and public duties do not conflict and the outside employment will not impair the employee’s independence of judgment in his or her County role. *See* Section 2-11.1(j), Ethics Code. The Ethics Commission has provided guidelines to ensure that the outside employment and the employee’s County employment do not conflict, including ensuring that the employee:

- (1) will not come into contact with the same persons or entities in both jobs;
- (2) will not conduct the outside employment during County hours or using County resources; and
- (3) has no role in any contract the outside employer may have with the County.

See RQO 17-01; RQO 16-02.

County employees on paternal leave may work for an outside employer, absent any County policy prohibiting such outside employment. *See* INQ 22-97.

Here, because you founded the as-yet unincorporated Jaylen’s Closet and you intend to do most if not all of the work involved in collecting donations in the name of Jaylen’s Closet, but to benefit Curley’s House of Style, this endeavor would constitute outside employment and you should seek outside employment approval from your supervisor, as required by Section 2-11.1 (j) and (k) of the Ethics Code.¹

¹ You are required to file an Outside Employee Statement annually disclosing the source and nature of your outside employment and any compensation you have received. *See* Section 2-11.1(k)(2). You should file this form, even if you are uncompensated. The form is available here: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf> (last accessed August 8, 2024).

D. Section 2-11.1 (m)(1) Certain Appearances and Payment Prohibited

Section 2-11.1(m)(1) prohibits County employees from lobbying County boards or agencies on behalf of third parties. This prohibition is broad and includes any appearance or presentation “with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit” sought by the third party. Section 2-11.1(m)(1), Ethics Code. The Ethics Commission has interpreted this provision to include any communications, in any form, intended to influence any County employee to take an official action. *See* INQ 20-119.

Here, if Jaylen’s Closet or Curley’s House of Style were to seek a County grant, for example, you would be prohibited from participating in that application or presentation. *Id.* Similarly, you should not request that County officials allow you to use County facilities or resources on behalf of either organization.

The restriction on lobbying continues for two years after a County employee separates from the County, which is defined as the day of the final payment to the employee. *See* Section 2-11.1(q), Ethics Code.

Opinion

Subject to the limitations and cautions discussed above, you are permitted to solicit donations on behalf of Curley’s House of Style, in the name of Jaylen’s Closet. 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.

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 this is an informal opinion, 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.