



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: Ofelia Tamayo, Director
Miami-Dade Audit and Management Services

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

SUBJECT: INQ 2024-147, Section 2-11.1(k), Prohibition on outside employment;
Section 2-11.1(w), Prohibition on acceptance of travel expenses from county vendors

DATE: August 22, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible ethics issues arising from your potential acceptance of an appointment to a committee of a nonprofit organization and the acceptance of travel expenses from the same.

Facts

You are employed as the Director of the Miami-Dade Audit and Management Services (“AMS”). Your responsibilities primarily include the administration of AMS and the supervision of all AMS staff.

The Institute of Internal Auditors, Inc. (“IIA”) is a foreign not-for-profit corporation registered to do business in Florida. The IIA was established in 1941 in Lake Mary, Florida, and is an international professional association for internal auditors. Its mission includes promoting the value of internal audit professionals, providing comprehensive professional educational and development opportunities and standards, promoting knowledge concerning internal auditing and its appropriate role, educating practitioners, and bringing together internal auditors from around the world.¹ You advised that the IIA is a County vendor, both for professional membership and because it participates in a vendor pool to provide continuing professional education credits.

¹ See *About The IIA*, ABOUT US, <https://www.theiia.org/en/about-us/> (last visited Aug. 20, 2024).

You advised that you are a member of the IIA and that, in the past, you have held various officer positions with the IIA. Presently, you have been offered an appointment to the IIA's Nominating Committee, which vets the IIA's Chair, Board, and other roles within the IIA's committees. Your appointment to the IIA Nominating Committee will be as a volunteer, meaning you will not receive any compensation in exchange for your committee service. You indicated that your committee duties will require you to attend approximately one monthly one-hour virtual meeting, with one meeting lasting approximately three hours. Over the course of one year, you do not anticipate all of your duties related to the role will involve more than approximately eighteen hours of your time, with one additional exception: an annual in-person meeting. You advised that your duties will also include one in-person meeting per year, for which you stated the IIA will offer to cover the travel costs, meaning flight, lodging, and meals. Because this is a meeting, not a conference, you indicated that there will not be a registration fee.

Issue

Whether your service on the IIA Nominating Committee constitutes outside employment and whether you may accept travel costs from the IIA related to your committee service.

Analysis

This inquiry involves multiple sections of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code"), each of which is analyzed below:

A. Section 2-11.1(k) – Prohibition on Outside Employment

The County Ethics Code provides that, "[a]ll full-time County and municipal employees engaged in any outside employment . . . shall file, under oath, an annual report indicating the source of the outside employment" County Ethics Code § 2-11.1(k)(2). Outside employment is considered "any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated." RQO 17-03. Generally, uncompensated outside employment for a traditional nonprofit entity is not considered outside employment. *Id.* However, 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. *Id.*

Multiple factors are considered when determining whether service with a non-profit is considered outside employment, including: (a) whether the person founded the non-profit; (b) whether the person serves as the non-profit's Executive Director or President, or in some other office; (c) whether the person is responsible for the non-profit's day-to-day functioning or activities; (d) whether the person receives any form of compensation for his or her service to the non-profit; and, (e) whether the person has significant time commitments as part of his or her service to the non-profit. *See* INQ 22-44; *see also* RQO 17-03.

In practice, an Administrative Officer 3 with the Miami-Dade Department of Solid Waste is engaged in outside employment when she serves as the Founder and Chief Executive Officer of a

Florida non-profit advocating for survivors of domestic violence. *See* INQ 23-47. In contrast, a Veterinarian with the Miami-Dade Parks, Recreation and Open Spaces Department is not engaged in outside employment when she volunteers to serve on the board of a non-profit that rescues wildlife because she is not the founder of the organization nor part of its executive leadership, is not responsible for its day-to-day functioning, and her service is not a significant time commitment. *See* INQ 23-117. Similarly, a Division Chief of the Miami-Dade Department of Transportation and Public Works (“DTPW”) is not engaged in outside employment when he serves on the board of directors of a non-profit that serves professionals in stormwater management and finance by providing them education, technical assistance, and advocacy. *See* INQ 22-59.

Here, based on the facts presented and discussed above, **it does not appear that your volunteer service on the IIA’s Nominating Committee constitutes outside employment** because: (a) you did not found the IIA; (b) your service will not be as leader or chief executive of the organization; (c) you will not be responsible for the day-to-day operation of the IIA; (d) you will not receive any form of compensation for your service on the Nominating Committee; and, (e) you will not have significant time commitments as part of your service. *See* RQO 17-03; INQ 23-117; INQ 22-59.

B. Section 2-11.1(w) – Prohibition on Acceptance of Travel Expenses from County Vendors

The County Ethics Code provides that no County departmental personnel or employee “shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county contractor, vendor, service provider, bidder or proposer.” County Ethics Code § 2-11.1(w).² The term “departmental personnel” includes department heads. *See* County Ethics Code § 2-11.1(b)(5).

In practice, an Assistant Director of the Miami-Dade Information Technology Department (“ITD”) and an IT Senior Contracts and Procurement Officer for ITD may accept uncompensated advisory positions as inaugural members of the Public Sector Industry Council, a council created by an information technology company that is a Miami-Dade County vendor. *See* INQ 19-59. However, they may not accept from the sponsor of said event, which is a County vendor, any travel related expenses to attend the inaugural meeting of the Public Sector Industry Council in New York, New York. *See id.*

² County Ethics Code Section 2-11.1(w) further provides that “[t]he Board of County Commissioners may waive the requirements of this subsection by a majority vote of the Commission.” However, Florida law provides that:

A reporting individual or procurement employee . . . is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual’s or procurement employee’s agency . . . if he or she knows or reasonably believes that the gift has a value in excess of \$100

See Fla. Stat. § 112.3148(4). A reporting individual includes anyone required by Florida law to file a full or limited financial disclosure, such as directors of County departments. *See* Fla. Stat. § 112.3148(2)(d). Unlike the County prohibition on the acceptance of travel expenses, the State prohibition of the acceptance of gifts valued over \$100 from vendors does not include any provision permitting a waiver by majority vote of the County Commission. *Compare* Fla. Stat. § 112.3148 with County Ethics Code § 2-11.1(w).

Here, based on the facts presented and discussed above, **you may not accept from the IIA any travel expenses, including transportation, lodging, meals, or any other incidentals, in order to attend the annual in-person meeting of the IIA's Nominating Committee** because the IIA is a County vendor. *See* County Ethics Code § 2-11.1(w); INQ 19-59.

Opinion

Based on the above-discussed facts, you are not engaged in outside employment, as that term is used in the County Ethics Code, by serving in an uncompensated volunteer capacity on the Nominating Committee of the IIA. *See* RQO 17-03; INQ 23-117; INQ 22-59. As such, you do not have to annually report your activities as outside employment as required by Section 2-11.1(k)(2) of the County Ethics Code.³ However, you may not accept from the IIA any travel expenses, including transportation, lodging, meals, or any other incidentals, as part of your service on the IIA's Nominating Committee because the IIA is a County vendor.

Additionally, several other sections of the County Ethics Code are worth review:

- You may not appear before any County board or agency to make a presentation on behalf of or seek any benefit for the IIA. *See* County Ethics Code § 2-11.1(m)(1).
- You may not exploit your County position to secure any special privileges or exemptions for yourself and/or for the IIA. *See* County Ethics Code § 2-11.1(g). Because the IIA is a County vendor and you will be serving in a volunteer capacity with the IIA, you should take special care to ensure that your service on the Nominating Committee does not have any relation to the business conducted between the County and the IIA, and you should equally ensure that you do not take any action in your County position that involves the IIA's business with the County so as to avoid any appearance of impropriety. *See* INQ 22-59; INQ 19-59.
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of the IIA. *See* County Ethics Code § 2-11.1(h); INQ 19-59. Thus, you must ensure that your participation in the IIA's Nominating Committee does not require or otherwise induce you to disclose confidential information acquired through your County position.

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.

³ Because your service on the IIA's Nominating Committee is not outside employment, you do not have to seek approval from your supervisor on a yearly basis to engage in this activity. *See* Miami-Dade Code § 2-11; *see also* RQO 17-03. Likewise, your service on the IIA's Nominating Committee would not raise any issue concerning the prohibition against conflicting employment. *See* County Ethics Code § 2-11.1(j).

Other conflicts may apply based on directives from the Miami-Dade Board of County Commissioners (“BCC”), the Miami-Dade Mayor’s Office or under state law. Questions regarding possible conflicts based on BCC or Mayoral directives should be directed to the County Attorney’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.