



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jana Wright,
Senior Auditor, Office of Commission Auditor
Miami Dade County Board of County Commissioners

FROM: Etta Akoni
Staff Attorney
Miami-Dade County Commission on Ethics and Public Trust

SUBJECT: INQ 2024-156, Outside Employment §2-11.1(k)(2) and (j)

DATE: September 19, 2024

CC: All COE Legal Staff

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

Facts:

You, Jana Wright, are a Senior Auditor with the Miami-Dade County Board of County Commissioners ("BOCC") in the Office of Commission Auditor. In this role, your responsibilities are to supervise and participate in audits of financial records of County administrative and revenue producing departments.

You advise that the Senior Auditor position does not require a license. You indicated that as Senior Auditor you do not work directly with County suppliers, contractors, subcontractors, or clients; and you do not have access to any non-public information that could be used in your proposed outside employment. You also advised that your BOCC position does not afford you the opportunity to recruit vendors, contractors, bidders, or members of the public who could use your outside employment services.

You are seeking approval to engage in outside employment with the School Board of Miami-Dade County as a Contract Employee. The School Board of Miami-Dade County ("SBMDC") is a division of the Florida Department of Education. You are neither an elected official nor an organizational leader for the SBMDC. As a Contract Employee you

will be required to perform professional and administrative work related to general funding, federal grants, state award programs, and coordinating and administering activities with Miami-Dade County Public Schools.

You advise that your work with SBMDC will not require you to come into contact with any county employees, departments, or county boards that you encounter in your County employment. You state that you will not use the same tools for SBMDC that you use for your BOCC position. You state that SBMDC is a registered county vendor, but you are not privy to any information or decision making about whether SBMDC will pursue any contracts, agreements, or business engagements with Miami-Dade County. You advise that SBMDC does not rent space from Miami-Dade County. Lastly, you indicate your proposed outside employment for SBMDC will not occur during your county work hours.

Issue:

Whether any prohibited conflict of interest may exist, pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), between Jana Wright’s County employment with the Miami-Dade County Board of County Commissioners and her outside employment with the School Board of Miami-Dade County as a Contract Employee?

Analysis:

Your inquiry involves several sections of the Miami-Dade County Ethics Code which are analyzed below:

A. Outside Employment

The Miami-Dade County Conflict of Interest and Code of Ethics (“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.” Section 2-11.1(j); *see also* section 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.”¹

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

¹ Additionally, State law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between her private interests and the performance of her public duties. §112.313(7)(a), Fla. Stat. (2017).

adverse to the interests of the County or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

Conflicting employment can occur when the outside employment is closely related to the employee's public duties and/or where the County employee deals with the same people or entities in both his/her outside employment and in his/her public position, e.g., similar clients, suppliers, or subcontractors. *See* INQ 23-138 (A conflict of interest could exist between a Miami-Dade County Fire Rescue Fire Plans Reviewer's county position and his proposed outside employment as Plan and Fire Safety Plan Reviewer for C.A.P. Government, Inc., (a private company providing administrative and technical support to Building Departments in municipalities throughout the state, including supervision, planning, secretarial support, plans review, inspections, etc.), because the outside employment could overlap with his work for the County. Specifically, the Miami-Dade County Public School facilities that are inspected by the Miami-Dade Fire Rescue division that employed him also conducts annual fire safety inspections of the same facilities and reviews fire safety plans that he might review in his outside employment. As a result, it appeared probable that his loyalties would eventually be divided between his County employment and his private employment).

However, if an employee's outside employment is totally unrelated to his/her County employment, such conflicts would generally not arise. For instance, in INQ 21-49, Ethics Commission staff determined that a Train Control Supervisor for the Miami-Dade County Department of Transportation and Public Works did not have a conflict of interest between his employment with the Miami-Dade County and his outside employment as part-time vocational instructor with Broward County Public Schools and as an Airport Maintenance Repair Technician II for JBT Aerotech Corporation, because his outside employment would not impair his independence of judgment in the performance of his public duties, as the employee has no contact or authority over the selection, oversight, of administration of the County's contract with his outside employer, in his County employment. *See also* RQO 16-02.

B. Contracting with the County

You have advised that SBMDC is a registered county vendor, but you are not privy to any information or decision making about whether SBMDC will pursue any contracts, agreements, or business engagements with Miami-Dade County to provide its services. However, in the event SBMDC decides to pursue a county contract, the County Ethics Code at Sections 2-11.1 (c)(2) and (d) allows you to enter into a contract, agreement, business engagement, or transact any business, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of your duties to the BOCC. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This means that you may not participate in determining the contract, agreement, or business engagement requirements or in awarding the contract, agreement, business engagement for which SBMDC may apply. Additionally, none of your County job responsibilities and job

descriptions may require you to be involved in the contract, agreement, business engagement in any way including, but not limited to, enforcement, oversight, administration, amendment, extension, termination, audit, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract, agreement, business engagement, or business transactions with SBMDC. *See* Sections 2-11.1(c)(2), (d), and (n), Miami-Dade County Ethics Code. Consequently, SBMDC **may not** enter into contracts with the Office of the Commission Auditor. *See* RQO 07-18.

C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about any contract, agreement, business engagement, or business transaction that SBMDC is seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code. INQ 19-36, INQ 19-32

D. Exploitation of Official Position

Finally, the Miami-Dade County Ethics Code prohibits County employees from exploitation of their official position to secure special privileges or exemptions for themselves and/or their businesses. This means that you may not use your County position to secure special privileges or exemptions with respect to any County contract to which SBMDC is applying. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43. Specifically, the County Ethics Code does not prohibit employees from using annual leave time or legal holidays approved by the County to engage in approved outside employment, however, an employee may not use sick leave to engage in outside employment. *See* INQ 18-222; INQ 09-194.

Opinion:

Based on the information provided during this review, it appears to be unlikely that the type of outside employment that Jana Wright is seeking to engage in would impair her independence of judgment in the performance of her County duties as a Senior Auditor. Thus, Jana Wright does not have a conflict of interest in her proposed outside employment with the School Board of Miami-Dade County.

This is because there is no overlap between her public duties and her outside employment; her outside employment will be performed outside of her County hours; she will not come into contact with the same persons or entities involved in her County work; she will not use the same tools in her outside employment as is used in her County work; and she does not have access to non-public information as part of her County employment that is, or could be, relevant to her outside employment. *See* RQO 17-01; RQO 16-02.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Jana Wright's permission to engage in her proposed outside employment:

- Jana Wright shall not engage in activities that relate in any way to her outside employment during her regular work hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with her outside employment, even after work). *See* Sections 2-11.1 (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.
- Jana Wright is prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of her County employment to derive a personal benefit or a benefit for the School Board of Miami-Dade County. *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.
- Jana Wright shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with her supervisor and department director through the designated County human resources system, which is currently INFORMS. Also, full time County employees are required to annually file an Outside Employment Financial Statement, disclosing income earned, or the lack thereof, from their outside employment, on a yearly basis with the Miami Dade County Elections Department by 12 Noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

This opinion is limited to the facts as you, Jana Wright, presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.