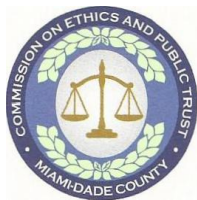


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 19, 2024

Katrina Baskin
Councilwoman
City of Miami Gardens

Delivered via email to: baskin.katrina@gmail.com

Re. INQ 2024-157, Section 2-11.1 (j), (d), (g), and (e), Miami-Dade Ethics Code

Dear Ms. Baskin,

Congratulations on your recent election to the Miami Gardens City Council and thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the application of the Ethics Code to your volunteer activities.

You advised that since March you have served as the volunteer president of the Parent Teacher Association (“PTA”) of the North County K-8 Center, a public school in Miami Gardens. You advise that your work primarily involves raising money for the PTA through events like pizza sales and snow cone sales. Before serving as president, you served as vice-president of the PTA.

You also advise that the PTA does not receive any grants directly from the City of Miami Gardens but that the City does provide in-kind donations by allowing the PTA to use city facilities for free events like the prom. Finally, you advise that your work on the PTA is not compensated in any way.

Issue:

Whether and how your new elected role with the City of Miami Gardens and your volunteer role with the PTA may pose a conflict of interest and how you can avoid it.¹

¹ Miami Gardens officials and employees are bound by the Miami-Dade Ethics Code, which was specifically adopted by Miami Gardens. *See* Article VII, Section 7.2, Miami Gardens Code of Ordinances. Miami Gardens also adopted additional provisions regarding disclosure of financial interests that are not relevant to this analysis. *See* Article VII, Section 7.2(b) and (c).

Analysis:

A. Section 2-11.1(j), Conflicting Employment

Section 2-11.1(j) of the Ethics Code prohibits city council members such as yourself from engaging in any outside employment that “would impair his or her independence of judgment in the performance of his or her public duties.” There is no *per se* prohibition on an elected official serving as the executive director or president of a non-profit entity. *See* INQ 22-158; INQ 21-25; *see also* RQO 21-01; RQO 12-05.

However, the Miami-Dade Commission on Ethics and Public Trust (“COE”) has repeatedly found that unpaid volunteer work for a non-profit may constitute employment under the Ethics Code. Multiple factors are considered when determining whether service with a nonprofit 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 23-148; INQ 22-44; *see also* RQO 17-03.

Here, for the purpose of this analysis, you should consider your work as president of the PTA as employment under the Ethics Code, even though you are not compensated, because you serve as the organization’s president. In general, there is no apparent conflict between your role as a City Commissioner and your work as president of the local PTA, but there are restrictions you must observe, detailed below.

B. Section 2-11.1(d), Prohibition on Transacting Business with the County (City)

The Ethics Code provides specific guidance on restrictions city council members must observe to avoid a conflict when it comes to their paid and unpaid work outside of government. Section 2-11.1(d) prohibits them from voting or participating “in any way” on matters that involve entities on which they serve as “(i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor.” Additionally, elected officials are prohibited from voting on or participating in the discussion of matters that would directly or indirectly affect them.

This voting conflict prohibition is stricter than the state law standard codified in section 112.3143 (3)(a), Florida Statutes, which provides that “No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained...” INQ 14-86. The County may impose a stricter standard than state law. *Id.* The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. Also, an automatic voting conflict arises under the County Code if the voting member has an enumerated relationship with an entity affected by the vote. *See* INQ 20-123.

Accordingly, the Ethics Commission has opined that a County Commissioner's employment with a nonprofit that receives funding from the County as a community-based organization ("CBO") created an automatic voting conflict of interest under subsection (d) of the Ethics Code for any matter before the County Commission that directly or indirectly affected the CBO. *See* INQ 20-123. This is primarily because as a paid employee of the CBO, it was deemed that the member might profit or be enhanced by action of the Board of County Commissioners affecting the CBO.

However, an elected official who was an **unpaid volunteer officer** for a non-profit organization violated the Ethics Code and was issued a letter of instruction by COE when he participated in a meeting of the city commission and advocated for the non-profit's funding. *See* C17-29. *See also* INQ 22-158; INQ 20-123; INQ 18-126; INQ 17-235.

To avoid violating the Ethics Code by voting or discussing any matter involving an entity where they are employed or where they volunteer as an officer, the Ethics Commission has advised elected officials to recuse themselves on such matters. *See* INQ 17-237.

An exception to this rule has been carved out for an elected official voting on an **overall budget**. In this instance, the voting member that serves in a primary enumerated position with a nonprofit entity may vote on an overall budget when the budget provides funding to the entity, if the funding allocation is very minor compared to the overall budget. *See* RQO 19-04; INQ 22-158; INQ 14-212. However, the preferred and recommended practice is to separate the line-item allocation that funds the affected entity so that the elected official can vote on the overall budget item, minus that line item. *See* RQO 19-04.

Here, when any issue comes before the Miami Gardens City Council related to funding of the PTA of which you are president, or any contracts between the PTA and the City, it is our recommendation that you recuse yourself. This would include any discussion or resolution regarding in-kind contributions Miami Gardens may make to the PTA. For any issue for which you will recuse yourself, you will need to not only follow Section 2-11.1(d), Miami-Dade Ethics Code, but also Section 112.3143, Florida Statutes. This requires that you announce publicly the nature of your conflict prior to any discussion and that you absent yourself from the chamber during the discussion and vote. Additionally, you are required to file State Form 8B with the Clerk within 15 days of the vote.²

C. Section 2-11.1(g), Exploitation of Official Position

Section 2-11.1(g) of the County Ethics Code prohibits an elected official from using or attempting to use his or her official position to secure special privileges or exemptions for himself, herself, or others. For example, if the elected official's outside employer applies for a grant from the City, then neither the official nor any member of his or her City staff may be involved in the grant application, award or its subsequent supervision, oversight, compliance or enforcement. *See* INQ 22-158.

² The form can be found here: <https://ethics.state.fl.us/Documents/Forms/Form%208B.PDF> (last accessed on September 16, 2024).

Additionally, the elected official may not sign any documents, including grant applications and contracts, which will be presented to his or her City government. *See generally* INQ 21-89; INQ 21-70; INQ 21-25. Furthermore, should any issue or dispute arise between the City and the nonprofit agency, the official is not permitted to participate in meetings or discussions regarding the same. *Id.*

The County Ethics Commission has interpreted this prohibition very expansively to include any communications, in any form, intended to influence an individual within the City to take an official action regarding funding from the City. *See* C10-14 (in which the COE sanctioned a County Commissioner for exploiting his official position when he met with County employees to advocate for funding for the nonprofit for which he worked).

Section 2-11.1(m)(1) of the Ethics Code has a similar provision, prohibiting elected officials from appearing before any City board or agency on behalf of any entity attempting to obtain “any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit.”

Moreover, an elected official may not use government staff or resources in support of his or her outside employment, including but not limited to phones, copiers, computers, fax machines, County computer programs, computer licenses purchased by the County, or County vehicles. *See generally* INQ 20-43.

Here, you may not use your City position or your access to City resources to secure special privileges or exemptions for the PTA and you should be extremely circumspect when it comes to any communications you sign in the name of the PTA, making sure that your name is not attached to any applications for funding or in-kind donations from the City, or any contracts with the City.

D. Section 2-11.1(e), Gifts

While County and municipal personnel are expressly prohibited from soliciting gifts, the Ethics Code includes an exception for City and County commissioners soliciting gifts on behalf of nonprofit organizations. *See* Section 2-11.1(e)(2)(g), Miami-Dade Ethics Code. This section of the code is only applicable to solicitations for donations to non-profit organizations that are designated as 501(c)(3) organizations and are only permitted where the commissioner is not receiving any compensation related to the solicitation. *See* INQ 22-158.

Nevertheless, elected officials are encouraged to avoid direct, targeted solicitations of City vendors, bidders and lobbyists on behalf of non-profits, even if the solicitation is not otherwise prohibited, in order to avoid situations where a City vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. *See* INQ 21-66.

Here, you are cautioned to carefully review any solicitations for donations to the PTA that are sent in your name, ensuring that these solicitations are directed to a general audience and not selectively targeted to City vendors, bidders or lobbyists.

Opinion:

In general, your work for the City of Miami Gardens and your work on the PTA can be compatible, but you must adhere to the following restrictions:

- i. Recuse yourself from and do not participate in any vote or discussions regarding funding for the PTA or any City contracts with the PTA, including for in-kind donations. *See* Section 2-11.1 (d), County Ethics Code.
- ii. Avoid any communication with City officials, City boards **or City staff** regarding any contract or grant between the City and the PTA and ensure that your name is not on any applications the PTA may make to the City. *See* Sections 2-11.1 (g) and (m)(1), County Ethics Code. Additionally, ensure that you are not using City resources on behalf of the PTA. *Id.*
- iii. Avoid participating in any solicitations for donations that are directed to City vendors, bidders or lobbyists specifically. *See* Section 2-11.1(e), County Ethics Code.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact me for further guidance.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

If I can be of further assistance, please feel free to contact me directly, or the Ethics Commission generally.

Regards,

Susannah Nesmith

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

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 who 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.