



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Scott Janowitz, Board Member  
Miami-Dade Historic Preservation Board

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

**SUBJECT:** INQ 2024-164, Section 2-11.1(j), Conflicting employment prohibited.

**DATE:** November 15, 2024

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest regarding your County board service and your employment.

#### Facts

You advised that, in 2023, you were appointed to the Miami-Dade Historic Preservation Board (“HPB”) by Miami-Dade County Commissioner Kevin Cabrera. The Miami-Dade Board of County Commissioners (“BCC”) accepted your appointment on November 7, 2023.

The HPB is vested with the authority to designate, regulate, and administer historical, cultural, archaeological, paleontological, and architectural resources in the County, under the control of the BCC. *See* Miami-Dade County Code § 16A-5. The HPB’s specifically delineated powers include designating individual sites, districts, and zones as historic, archeological, or paleontological, as well as issuing or denying certificates of appropriateness and certificates to dig. *See* Miami-Dade County Code § 16A-9(2) & (3). Certificates of appropriateness are prerequisite to alter or modify designated sites, districts, or zones. *See* Miami-Dade County Code § 16A-11(1). Additionally, certificates to dig are prerequisite to any new construction, digging, tree removal, or other ground-disturbing activity within an archeological or paleontological site or zone. *See* Miami-Dade County Code § 16A-14(1). An aggrieved party may appeal a quasi-judicial decision rendered by the HPB to the BCC, whose decision the aggrieved party can then appeal to a state court of competent jurisdiction. *See* Miami-Dade County Code § 16A-15(1) & (9).

You advised that you recently accepted employment with the Eleventh Judicial Circuit of Florida as a General Magistrate. In the Eleventh Judicial Circuit, the Chief Judge appoints general magistrates “to hear cases and make findings of fact and recommendations in a General Magistrate’s Report to judges in the Family, Circuit Civil, Unified Children’s Court and Probate Divisions.”<sup>1</sup> As you mentioned, the powers and duties of a General Magistrate are set forth in Florida Rule of Civil Procedure 1.490. Any person appointed to the position of General Magistrate must take an oath of office before discharging any duties of the office. *See* Fla. R. Civ. P. 1.490(a). “Every magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court . . . [and p]rocess issued by a magistrate shall be directed as provided by law.” Fla. R. Civ. P. 1.490(d). You have accepted appointment as a Circuit Civil Magistrate.<sup>2</sup>

### Issue

Whether any prohibited conflict of interest may exist between your service on the Miami-Dade Historic Preservation Board and your employment as a General Magistrate with the Eleventh Judicial Circuit of Florida.

### Analysis

Your inquiry raises questions under the Miami-Dade Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) and under the Florida Constitution, as discussed below.

#### A. Section 2-11.1(j) – Conflicting Employment Prohibited

The County Ethics Code prohibits County quasi-judicial personnel from accepting employment outside of their County board service, “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).<sup>3</sup> An individual is considered “quasi-judicial personnel” if he or she is a member of “the Community Zoning Appeals Board and such other boards and agencies of the County as perform quasi-judicial functions.” County Ethics Code § 2-11.1(b)(3).

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. Several factors are considered to determine whether a potential conflict of interest exists between an individual’s County position

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<sup>1</sup> *See General Magistrates*, ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, <https://www.jud11.flcourts.org/General-Magistrates> (last visited Nov. 8, 2024).

<sup>2</sup> *See Judicial Section Details*, ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, <https://www.jud11.flcourts.org/Judge-Details?judgeid=1149&sectionid=167> (last visited Nov. 8, 2024).

<sup>3</sup> Additionally, Miami-Dade County Administrative Order (“AO”) 7-1 provides that it is County policy that “public employees avoid any and all situations that represent or appear to represent, conflicts between their personal interests and their public duties.”

and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the official has decision-making authority over the same subject matter that the outside employment concerns; whether the official solicits business or customers in the same area over which he or she has jurisdiction; whether the official will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the official serves funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 23-61; INQ 21-66. Additionally, the prohibition against conflicting outside employment prohibits covered individuals from engaging in employment that creates “a substantial or frequently recurring conflict between his or her private employment interests and the performance of his or her public duties ‘such that this would impede the full and faithful execution of his or her public duties.’” INQ 23-115 Amended (quoting INQ 22-15).

In practice, a Miami-Dade County Commissioner did not have a prohibited conflict of interest in his proposed outside employment as Chief of External Affairs for the nonprofit entity Children of Inmates (“COI”), even though COI primarily received funding from The Children’s Trust (“TCT”) – a Miami-Dade County entity – because TCT funding resolutions were not reviewed or approved by the BCC and because he would not engage in outreach or funding solicitation activities in Miami-Dade County. *See* INQ 21-66.

Here, based on the information provided at this time, it does not appear that your outside employment as a General Magistrate with the Eleventh Judicial Circuit of Florida would give rise to a prohibited conflict of interest due to a substantial and/or recurring conflict that would impede the full and faithful execution of your public duties. *See* RQO 17-01; INQ 23-115 Amended; INQ 21-66. This is because, while quasi-judicial decisions rendered by the HPB, after being appealed to the BCC, are then appealed to the Eleventh Judicial Circuit of Florida, it does not appear that your duties as a General Magistrate would ever involve such an appeal. *See* Miami-Dade County Code § 16A-15(1) & (9).<sup>4</sup> This situation is analogous to the Miami-Dade County Commissioner who operated a nonprofit that received County funds, but the funding decisions were made by an independent County entity whose decisions did not come before the BCC for review. *See* INQ 21-66. Similarly, here, the decisions of the HPB will not come before you as a General Magistrate in the Civil Division of the Eleventh Judicial Circuit of Florida. Nevertheless, while there does not appear to be a prohibited conflict of interest under the County Ethics Code, State law cannot be ignored.

#### B. Article II, Section 5(a) – Public Officers

The Florida Constitution provides that:

No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution

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<sup>4</sup> “The Appellate Division hears appeals from the county court and from various quasi-judicial boards and administrative agencies.” *See Appellate Division*, APPELLATE, <https://www.jud11.flcourts.org/about-the-court/court-divisions/appellate> (last visited Nov. 8, 2024).

revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

Art. II, § 5(a), Fla. Const.

The dispositive question under this provision of the Florida Constitution is whether both positions held are offices. “The term ‘office’ implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an ‘employment’ does not comprehend a delegation of any part of the sovereign authority.” *State ex rel. Holloway v. Sheats*, 78 Fla. 583, 588 (Fla. 1919). The Florida Attorney General has issued numerous opinions offering guidance on whether a particular public position is an “office” or an “employment.”

In relation to municipal boards, where the board is given the authority to make factual determinations, review permit applications, issue permits, grant variances, or impose fines, it has generally been determined that the board is exercising sovereign powers when it does so. *See* Op. Att’y Gen. Fla. 16-15. Specifically, a member of the Broward County Historic Preservation Board held an “office” under the Florida Constitution because the board exercised the sovereign power of the State where the board’s duties included the approval or denial of certificates of appropriateness – certificates that were required prior to the issuance of a building permit for a historic resource. *See id.*

With regard to General Magistrates appointed pursuant to Florida Rule of Civil Procedure 1.490, the Rule itself refers to the position as an “office,” the position requires the taking of an oath, and general magistrates so appointed may issue process as provided by law. Thus, “it appears that such magistrates exercise the sovereign power of the state and would constitute officers for purposes of the constitutional dual office-holding prohibition.” *See* Informal Op. Att’y Gen. Fla. *Hinds* (Nov. 20, 2008).

Here, it appears, based on the past guidance of the Florida Attorney General, that both your County office as a Board Member of the HPB and your new position as a General Magistrate both constitute an “office” under the Florida Constitution. *See* Op. Att’y Gen. Fla. 16-15; Informal Op. Att’y Gen. Fla. *Hinds* (Nov. 20, 2008). Thus, it would appear that the Florida Constitution prohibits you from holding both offices simultaneously. Furthermore, the acceptance of an incompatible office by one already holding an office operates as a resignation of the first office. *See Holley v. Adams*, 238 So.2d 401, 407 (Fla. 1970); *Gryzik v. State*, 380 So.2d 1102, 1104 (Fla. 1st DCA 1980).

You are reminded that the Ethics Commission does not have authority to interpret the Florida Constitution, and you are encouraged to contact the Florida Attorney General for interpretations of Florida’s Constitution. *See* Miami-Dade County Code §§ 2-1068, 2-1072(a).

### Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest between your position as a Board Member of the HPB and your outside employment as a General

Magistrate with the Eleventh Judicial Circuit of Florida. *See* County Ethics Code § 2-11.1(j); RQO 17-01; INQ 23-115 Amended; INQ 21-66.

However, it does appear that the prohibition on dual officeholding in Article II, Section 5(a), of the Florida Constitution would prohibit you from serving as a Board Member of the HPB while also serving as a General Magistrate. *See* Op. Att’y Gen. Fla. 16-15; Informal Op. Att’y Gen. Fla. *Hinds* (Nov. 20, 2008).

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 under state law. 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/>.

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*INQs are informal opinions provided by the legal staff after review and approval by the Executive Director and/or General Counsel. INQs deal with opinions previously addressed in public session by the Miami-Dade Commission on Ethics and Public Trust or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Ethics Commission 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 this opinion may be subject to investigation and a formal Complaint filed with the Ethics Commission.*