



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Katherine Naranjo, Construction Manager 1
Miami Dade County Parks, Recreations, and Open Spaces Department

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

SUBJECT: INQ 2024-169 Outside Employment §2-11.1(c),(k)(2), and (j)

DATE: November 26, 2024

CC: All COE Legal Staff

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

Facts:

You, Katherine Naranjo, are a Construction Manager 1 with the Miami Dade County Parks, Recreations, and Open Spaces Department (PROS). In this role, you are responsible for the oversight of small-scale construction projects within the Parks, Recreation, and Open Spaces Construction & Maintenance Division. Your duties encompass the management of projects throughout all phases of development, including planning, consultant selection, design oversight, contractor selection, construction management, inspection, and warranty administration. You apply independent judgment and expertise in architectural planning, design, and construction principles, with supervision provided by a professional and administrative superior who evaluates your performance through regular reviews and reports.

You are seeking approval to engage in outside employment with KAAT Construction, Inc., a Florida for Profit corporation, formed in 2020. You also advise that you are the chief executive officer, registered agent, and qualifying professional for KAAT Construction, Inc. Your work for KAAT Construction, Inc. includes inspections of projects to ensure compliance with building codes and overseeing all operational aspects of the business and ensuring that all projects meet regulatory standards. You fulfill these responsibilities to KAAT Construction, Inc. after your regular work hours for Miami-Dade County and on weekends.

Although you are a certified general contractor¹ and a real estate broker², you advise that your Construction Manager 1 position does not require a license and Miami-Dade County does not pay for this license. You advise that although your County and outside employments deal with construction, there is no reason for you to be in contact with the same or similar people or entities in both positions as there is no overlap because KAAT Construction specializes in residential construction, while your role with Miami-Dade County focuses on the maintenance of Parks facilities, specifically managing pool maintenance contracts.

You indicated that as Construction Manager 1, you do not recruit suppliers, contractors, subcontractors, or clients relevant to KAAT Construction, Inc. work and you do not have access to any non-public information relevant to KAAT Construction, Inc. You also advised that will not use the same tools, materials, resources, and databases as you use in your outside employment. Additionally, while KAAT Construction, Inc. does interact with County employee, departments, or County boards regularly, you will not be the person to handle these matters. Rather, your business partner will handle such matters.

You state that KAAT Construction, Inc. wishes to become a registered county vendor and intends to pursue opportunities to provide residential and building construction services to Miami-Dade County Department of Public Housing and Community Development. Lastly, you advise that KAAT Construction, Inc. does not rent space from Miami-Dade County.

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 Katherine Naranjo’s County employment with Miami-Dade County Parks, Recreations, and Open Spaces Department and her outside employment as the owner of KAAT Construction, Inc.

Analysis:

Your inquiry involves several sections of the Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) which are analyzed below:

¹ State of Florida Department of Business and Professional Regulation website indicates that Katherine Naranjo was issued a certified general contractor license, number CGC1519039, on September 28, 2010, and it expires on August 31, 2026. <https://www.myfloridalicense.com/LicenseDetail.asp?SID=&id=913790462D3EAD6453F5625F3E565324> Website visited on November 21, 2024.

² State of Florida Department of Business and Professional Regulation website indicates that Katherine Naranjo was issued a real estate license, number SL3572425 on April 10, 2023, and it expires on March 31, 2025. <https://www.myfloridalicense.com/LicenseDetail.asp?SID=&id=F8AF472FDCC19F8C172CDD75AAC6742E> Website visited on November 21, 2024

A. Outside Employment

The 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.”³

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 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* RQO 15-03. The County Ethics Code prohibits County employees from engaging in outside employment that is likely to create conflicts of interest between the employee’s County responsibilities and their outside job duties.

The Ethics Commission has previously opined that a Manager of Capital Improvement for PROS may engage in outside employment as President of Castina Construction, Inc., her privately owned business that provides general contractor and construction management for residential projects, because her outside employment would not impair her independence of judgment in the performance of her County duties as there was no overlap on her public and private duties; her private company would perform work for private residential properties; she did not assist the same clients nor use the same resources in both positions; her outside employment did not require her to interact with other County employees; and the work would be performed outside her County hours. *See* INQ 22-91.

Additionally, a Water and Sewer Department employee did not have a conflict of interest regarding his outside employment performing interior remodeling work through his privately-owned company because his outside employment is unrelated to his County duties; would not impair his independence of judgment in the performance of his duties;

³ 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 his private interests and the performance of his public duties. §112.313(7)(a), Fla. Stat. (2017).

and it will not conflict with his County employment hours. *See* INQ 18-79. A PROS Construction Manager did not have a conflict of interest regarding his employment at the County and his outside employment as a freelance civil engineer because his outside employment would not impair his independence of judgment in the performance of his County duties as he will not transact business with the County or any County vendor; he will work exclusively on residential projects; and he will not use any County time or resources in his outside employment. *See* INQ 21-54. Lastly, the Ethics Commission determined that an Airport Lighting Technician did not have a conflict of interest between his employment with the Miami-Dade County and his outside employment as owner of an electrical contracting company, which is also a registered County vendor, 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 J&A, in his County employment. *See* INQ 21-49; *see also* RQO 16-02.

B. Contracting with the County

You have advised that KAAT Construction, Inc. wishes to become a registered county vendor and plans to seek to contract with Miami-Dade County to provide its services. When KAAT Construction, Inc. 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 PROS. *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 that you may also apply for. 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, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract, agreement, business engagement, or business transaction. *See* Sections 2- 11.1(c)(2), (d), and (n), Miami-Dade County Ethics Code. Consequently, KAAT Construction, Inc. **may not** enter into contracts with PROS. *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 KAAT Construction, Inc. 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 KAAT Construction, Inc. 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 Katherine Naranjo is seeking to engage in would impair her independence of judgment in the performance of her County duties as Construction Manager 1. Thus, Katherine Naranjo would not have a conflict of interest in her proposed outside employment as the owner of KAAT Construction, Inc.

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, and 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. Moreover, 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 Katherine Naranjo's permission to engage in her proposed outside employment:

- Katherine Naranjo 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.
- Katherine Naranjo 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 KAAT Construction, Inc. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- Katherine Naranjo 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. County employees are also required to file an annual Outside Employment Financial Statement, disclosing income earned, or the lack thereof, from their outside employment, on a yearly basis with the Ethics Commission 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, Katherine Naranjo, 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, 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 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.