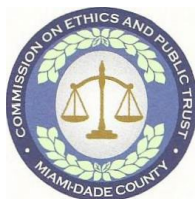


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 26, 2024

Xavier Alban
Assistant City Attorney
City of Miami
Delivered via email to: XEAlban@miamigov.com

Re: INQ 2024-18; Sections 2-11.1(y) and (b), Miami-Dade County Conflict of Interest and Code of Ethics and City of Miami Conflicts of Interest Code

Dear Mr. Alban,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding the application of provisions of the Ethics Code to the employees of certain autonomous boards established by the Miami City Commission, specifically the Little Haiti Revitalization Trust (“Trust”), the Coconut Grove Business Improvement District (“CG BID”), the Wynwood Business Improvement District (W BID”) and the Downtown Development Authority (“DDA”).

Facts

You advised that the recently appointed President of the Little Haiti Revitalization Trust requested guidance on whether she needed approval for outside employment, and from whom that approval would come. The Trust is an “instrumentality and agency” of the City of Miami. *See* Section 12.5-40, Miami Code, et seq. The President was appointed by the Trust board, with the approval of the City Commission, and is paid out of Trust funds. You advise the Trust President is not a City employee.¹

Upon further discussion of the Trust’s enabling ordinance and the City and County ethics codes, you also requested guidance on employees of three other similar city entities, the CG BID, the W BID and the DDA.

¹ The Trust president *may* be a City employee. *See* Section 12.5-45, Miami Code. A prior president was a City employee, but the current president is not. No other staff members currently working for the Trust or contemplated in the future are City employees.

The CG BID was established by the City Commission to improve and promote Coconut Grove. *See* Section Sec. 2-1256, Miami Code.² It is funded by a special assessment levied on businesses within the District and other specific fees. The Board appoints the Executive Director; the Executive Director and staff members specifically have no civil service rights or privileges. You advise that the CG BID Executive Director is not a city employee.

The enabling ordinance that created the W BID is very similar to the ordinance that established the CB BID, in that it notes that the Executive Director and staff members specifically have no civil service rights or privileges. *See* Section 2-1322, Miami Code. You advise the W BID Executive Director is not a city employee.

The DDA is a “body corporate,” created by City Code, with a limited taxing authority within the downtown area. *See* Section 14-51, Miami Code. The Executive Director of the DDA serves at the pleasure of the Board of the DDA. You advise that the DDA Executive Director is not a city employee.³

Further, you advise that each of the above entities has its own federal employer identification number and the employees of the respective boards are not part of the city’s pension system and do not receive other City-provided employment benefits.

Issue

Whether the Miami-Dade County Code of Ethics or the City of Miami Conflicts of Interest Code covers the executive directors and/or employees of the Trust, the CG BID, the W BID, or the DDA.

Analysis

The City of Miami’s Conflicts of Interest Code applies to “every officer, official and employee of the city, including every member of any board, commission or agency of the city.” *See* Section 2-611, Miami Code. Concurrently, the Miami-Dade Code of Ethics applies to employees of the City and to members of autonomous boards, but not to the employees of autonomous boards. *See* Section 2-11(y). The relevant portion of the jurisdiction section of County Ethics Code states:

Jurisdiction of the Ethics Commission shall automatically extend to Commissioners, the Mayor, autonomous personnel, quasi-judicial personnel, departmental personnel, employees, contract staff, advisory personnel, immediate family, lobbyists as defined in

² It should be noted that this section also prohibits the executive director of the CG BID from engaging in “any other business or profession.” This provision is not included in the enabling ordinances that created the W BID or the Trust, but is included in the enabling ordinance of the DDA.

³ The DDA enabling ordinance includes an ethics provision. *See* Section 14-61, Miami Code. That provision prohibits both board members and employees of the DDA from participating in any matter or transaction in which the member or employee has a direct or indirect financial interest. *Id.* This provision is not governed by the City or County Ethics Code.

subsections (b) and (s) who are required to comply with the Conflict of Interest and Code of Ethics Ordinance.

The Ethics Code defines “autonomous personnel” as:

[T]he *members* of semi-autonomous authorities, boards, and agencies as are entrusted with the day to day policy setting, operation and management of certain defined County functions or areas of responsibility, even though the ultimate responsibility for such functions or areas rests with the Board of County Commissioners. (Emphasis added).

See Section 2-11.1(b)(2), Ethics Code.

A similar issue arises with certain Community Redevelopment Agencies established by municipalities and not specifically placed under the jurisdiction of the Ethics Code. See INQ 18-202. Such agencies are, of course, governed by Section 112.313, Florida Statutes, as are the above four boards.⁴

Opinion

Employees of the four autonomous City boards are not subject to the City Conflicts of Interest Code or the County Ethics Code. In the interest of transparency, the president of the Trust may wish to voluntarily disclose her outside employment by filing the same form that City employees use to request outside employment approval, but she is not required to do so.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the below-named Staff Attorney.

Other conflicts may apply based on directives from the City Commission or under state law. Questions regarding possible conflicts based on City Commission directives should be directed to the City 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/>.

Sincerely,

Susannah Nesmith

Susannah Nesmith

⁴ See generally CEO 20-7 (The members of the [Miami 21] Task Force, once they are appointed, will be public officers, as defined in Section 112.313(1), Florida Statutes. They will occupy offices created by a mechanism of law (a resolution of the City Commission) to perform a function of the City government (reviewing ordinances and proposing government action) in positions that can only be assumed by appointment by the City Commission. See CEO 20-02. Because they will be public officers, the members of the Task Force will be subject to the prohibitions and exceptions found at Section 112.313(7)(a), Florida Statutes, among others.)

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 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.