



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Bryan Alvarez, Real Estate Analyst
Miami-Dade Department of Public Housing and Community Development

Coralee Taylor, Chief Real Estate Officer
Miami-Dade Department of Public Housing and Community Development

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

SUBJECT: INQ 2024-24, Section 2-11.1(j), Conflicting employment prohibited

DATE: February 5, 2023

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 your outside employment as a realtor representing private parties.

Facts

You are one of four real estate analysts at the Infill Program of the Miami-Dade Department of Public Housing and Community Development (“PHCD”). The Infill Program¹ conveys surplus County-owned property to certain qualified developers who are required to build single-family homes, or in some cases a multifamily home, on the property within two years and then sell the home or homes to qualified low-income buyers. According to the job description that you provided, your office is in charge of maintaining the list of infill properties, recommending the conveyance of properties to qualified developers, monitoring the developers’ compliance with the many requirements for Infill Program development. Your office also ensures compliance with the requirements for buyers of Infill Program homes. The County oversight provided by your office

¹ For more on the Infill Program, see the program guidelines.
<https://www.miamidade.gov/housing/library/guidelines/infill/infill-housing.pdf> (accessed February 2, 2024).

continues for at least 20 years and as long as 60 years, during which period homeowners who decide to sell are required to do so to qualified low-income buyers at specified rates below market value.

You have a real estate license and have requested guidance on any potential conflicts of interest were you to begin engaging in outside employment as a realtor focused on private residential sales and the new construction market.

Your outside employment would occur outside of your County hours of employment and you would not use any County resources in your outside employment. You further advise that your work would not involve the same people or similar entities that you currently work with in your County employment and you will not interact with County employees, departments, or boards in your outside employment, nor would you have access to confidential information that would be relevant to your outside employment. Lastly, you do not work in a County position which requires you to recruit vendors, contractors, bidders, or members of the public who could use your outside employment services.

Issue

Whether any prohibited conflict of interest may exist between your employment at PHCD and your proposed outside employment as a private realtor.

Analysis

Sections 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties, thereby creating a conflict between the employee's public responsibilities and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under 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*." (Emphasis added).

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds, at any time, that the outside employment is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 23-15; INQ 12-49.

Several factors are considered to determine whether a potential conflict of interest exists between an individual's County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the employee has decision-making authority over the same subject matter that the outside employment concerns; whether the employee solicits business or customers in the same area over which he or she has jurisdiction in his or her public duties; whether the employee will come into contact with the same or similar people or entities in both his or her public position and the outside employment; and whether the

public entity with which the employee serves funds or has contracts or agreements with his or her outside employer. *See* RQO 17-01; INQ 21-54; INQ 21-72; INQ 17-162.

Outside employment is more likely to conflict with County employment “when the two pursuits overlap or are closely related.” INQ 16-89 (citing RQO 12-11, INQ 12-159). It is clear that in this case, the two jobs are closely related. However, “a similarity between an employee’s County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest.” INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

The Ethics Commission has found that an employee who worked in the loan compliance unit at the Miami-Dade Housing Agency, a precursor to PHCD, could engage in outside employment as a realtor, with certain restrictions. *See* RQO 05-65. Those restrictions included that the employee could not represent homebuyers or developers who received loan financing from the Miami-Dade Housing Agency. *Id.* Additionally, the employee was required to submit a list of her clients to her division director on a quarterly basis, so the supervisor could monitor her outside employment for any potential conflicts of interest. *Id.*

In situations where the County employee was not able to restrict their outside employment to avoid the type of overlap described above, the Commission has found that the outside employment represented a conflict of interest and was prohibited. *See* INQ 17-162 (a Miami-Dade Aviation Department employee was barred from engaging in outside employment with a General Aeronautical Services Permittee working at the airport because she would periodically interact with the same people or entities in both jobs).

Opinion

Based on the facts presented here and discussed above, your proposed outside employment is only permitted if you observe the following restrictions:

- Decline to represent any developers who have Infill projects, including developers who may not be involved with any of the properties in your specific case load.
- Decline to represent buyers who want to purchase in Infill property from a developer.
- In the event that a buyer you are representing independently discovers an Infill property and decides they would like to purchase it, you must cease all representation of that buyer, and decline any payment whatsoever (such as a referral fee) for that buyer.
- Report your list of clients to your supervisor on a quarterly basis, so that she can verify none are Infill developers or buyers.

In addition to the above restrictions specific to your role at PHCD, you are cautioned that all County employees must observe the following limitations when engaging in outside employment:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 20-43; INQ 19-123.
- You shall not engage in activities that relate in any way to your outside employment during regular business 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 your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 15-240; and INQ 05- 29.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, a benefit for your outside employer or your clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself, your outside employer or your clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent your outside employer or your clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties as a realtor, it is important to note that you would be prohibited from doing any such activities on behalf of your outside employer or your clients.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County’s Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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 based on directives from PHCD or under state law. Questions regarding possible conflicts based on PHCD directives should be directed to PHCD or the Mayor’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/>.

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.