



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Karen Diazgranados, Special Projects Administrator  
Miami-Dade Office of Innovation and Economic Development

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

**SUBJECT:** INQ 2024-30; Section 2-11.1(j), Conflicting employment prohibited;

**DATE:** February 16, 2024

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest related to your proposed service on the Hispanic Affairs Advisory Board (“HAAB”).

#### Facts

You are currently employed by the Miami-Dade Office of Innovation and Economic Development in the Marketing Partnerships Program. You advise that your job responsibilities primarily include managing marketing and sponsorship opportunities, serving as a liaison between county departments and businesses and working with county agencies to identify marketable municipal assets and leverage asset bundling opportunities. The Marketing Partnerships Program was created by the Board of County Commissioners to “generate revenue for the County using the commercial marketable value of county assets.” Section 2-2201, Miami-Dade Code of Ordinances. The Program promotes and manages sponsorship programs county-wide. *See id.*

You would like to apply to serve as a member of the County’s Hispanic Affairs Advisory Board, which advises the Board of County Commissioners on ways to improve the quality of life of Hispanic residents, while encouraging the involvement of Hispanic residents in community issues and supporting the development of Hispanics in leadership roles. *See* Section 2-532, Miami-Dade Code of Ordinances. The Board consists of 26 volunteer members, with each County Commissioner responsible for appointing one and the other 13 members appointed by the Board’s Nominating Committee and ratified by the Board. *See* Section 2, Article IV, Board Bylaws.

## Issue

Whether any prohibited conflict of interest may exist between your County employment and your proposed service on the HAAB.

## Analysis

As a preliminary matter, while there is no general prohibition against the appointment of a County employee to a County board, the “Ethics Commission” generally cautions against the practice of County board service by County employees because several provisions of the County Ethics Code are implicated with such service. *See* INQ 23-153; INQ 21-51. Furthermore, whenever a County employee is being considered for membership on a County Board, the Ethics Commission has recommended that it be consulted for an ethics opinion prior to the election or appointment. *See* INQ 21-51; INQ 16-03.

This inquiry involves multiple sections of the County Ethics Code, as discussed below:

### A. Section 2-11.1(j) – Conflicting employment prohibited

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“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).<sup>1</sup>

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). 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).

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<sup>1</sup> By its terms, Section 2-11.1(j) of the County Ethics Code applies to “other employment.” However, outside employment is generally 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 (emphasis added). Nevertheless, historically, this agency has applied section 2-11.1(j) of the County Ethics Code to persons concurrently serving on a County advisory board and employed by the County. *See, e.g.*, INQ 23-153; INQ 23-47; INQ 21-51; INQ 21-13; INQ 18-67; INQ 16-03. Regardless, because Section 2-11.1(j) of the County Ethics Code would not prohibit you from concurrently serving on an advisory board, for the reasons discussed herein, this issue need not be resolved at this time.

Additionally, you are not required to file the annual Outside Employment Statement reporting your County employment as “outside employment” because the County Ethics Code only requires the filing of said annual statement from “full-time County and municipal employees engaged in outside employment for any person, firm, corporation or entity *other than* Miami-Dade County ....” County Ethics Code § 2-11.1(k)(2) (emphasis added).

An example of overlapping and related duties that posed a prohibited conflict arose when an employee of the County’s Community Action and Human Service Department served on the Domestic Violence Oversight Board because that Board had oversight over certain functions of her employing department and its advisory role to the Board of County Commissioners directly impacted her employing department’s budget and funding. *See* INQ 21-51. In contrast, an employee of the Department of Solid Waste Management would have had no prohibited conflict of interest were she to serve on the Domestic Violence Oversight Board because the Board had no oversight or advisory role over her employing department. *See* INQ 23-47. Similarly, an employee of the Parks, Recreation and Open Spaces Department could serve as a member of the Citizens’ Independent Transportation Trust because there was no overlap in duties that would affect her independence of judgment in either of the two positions. *See* INQ 21-13; *see also* INQ 23-51 (finding that, by adhering to minimal limitations, an employee could serve on an advisory board, as long as he took care to avoid any appearance of conflict in the rare instances when his employing department appeared before his board).

**B. Section 2-11.1(g) – Exploitation of official position prohibited**

The County Ethics Code provides that no County advisory personnel or County employees “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted . . . .” County Ethics Code § 2-11.1(g). One of the primary rationales underlying County Ethics Code Section 2-11.1(g) is that a public officer or employee may not use his or her official position to secure the use of public resources for private use. *See* C18-22-05 (finding Chief of the Miami-Dade Fire Rescue Department (“MDFR”) exploited his official position by utilizing an MDFR boat to transport himself and his wife to and from the Miami Boat Show).

In practice, when a County employee is also serving on a County board, the County employee should use his or her leave time to attend any County board meetings that occur during his or her regularly scheduled work hours unless his or her supervisor determines “that service on the board is directly relevant to the work, goals and mission of the employing agency, such that it would be a justifiable expenditure of the agency’s resources to support such activity.” INQ 15-189. In that instance, the County department was advised that a county employee who used work time to attend a board meeting that was not directly relevant to the work of his employing department could be found in violation Section 2-11.1(g). *See id.*<sup>2</sup>

Furthermore, a County employee serving on an advisory board may not participate in the preparation of any presentations that his or her employing department may make to the board on which the employee serves. *See* INQ 23-153 (finding that an employee of the Department of Parks,

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<sup>2</sup> Of note, the ordinance governing the HAAB mandates that any member is automatically removed if he or she misses two consecutive meetings without an acceptable excuse or misses three meetings without an acceptable excuse, though board members who miss three or more meetings, even *with* an acceptable excuse, may be voted off the board. *See* Section 2-532, Miami-Dade Code or Ordinances. The HAAB currently meets monthly at 6 p.m., but you should discuss your proposed board membership with your supervisor and any time commitments board service will require of you.

Recreation and Open Spaces could serve as a member of a Community Advisory Committee which rarely considered issues involving the employee's department, provided that the employee did not participate in the preparation of any grant requests his employing department might make to the Committee, to avoid any appearance of a conflict of interest).

C. Section 2-11.1(v) – Voting Conflicts

The County Ethics Code provides that advisory board members are prohibited from voting:

on any matter presented to an advisory board . . . on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

County Ethics Code § 2-11.1(v). Accordingly, for a voting conflict to exist under Section 2-11.1(v) of the County Ethics Code, both prongs must be met. *See* RQO 07-49; INQ 20-73.

An example of voting conflict under Section 2-11.1(v) arose for a member of the Miami-Dade Land Acquisition Select Committee when the committee was set to vote on whether to recommend the County purchase a parcel of land owned by the board member's private employer because he had an enumerated relationship *and* the property sale could directly impact his employer's funding for his position. *See* INQ 20-74. Whenever a board member has a prohibited voting conflict, the member is required to publicly announce that he or she has a conflict and the nature of the conflict. *See* Fla. Stat. § 112.3143(3)(a). Furthermore, upon recusal, the board member must file a written disclosure regarding the nature of the conflict with the person responsible for recording the minutes of the meeting within fifteen (15) days after the vote. *See id.*

Opinion

Based on the facts presented here and described above, it appears unlikely that you would have a prohibited conflict of interest if you served on the HAAB while concurrently working for the County in your current role because the HAAB does not have oversight over your department and your department does not do work directly related to the HAAB's mission. However, the Board has a broad mission that conceivably touches every department in the County, and may specifically involve any Department at a given time. Similarly, your County employment may involve resources owned or managed by any County Department. While there are no obvious conflicts between the two roles, you should be ever mindful of any potential overlap that may arise going forward. *See* INQ 21-51. Additionally, you must be cautious to ensure that you do not use County resources available to you in your employment, including your own work time, to work for the Board, unless your department director makes a specific finding that the Board service is directly relevant to the work, mission and goals of your department. *See* INQ 15-189. Finally, you must avoid any voting conflict while serving on the Board. *See* INQ 20-74.

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 or under state law. Questions regarding possible conflicts based on ITD directives should be directed to ITD 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 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.