



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Edward Wimberly, Administrative Officer
Miami-Dade Community Action and Human Services Department

Delores Holley, Director
Office of Housing Advocacy, Miami-Dade Aviation Department Community
Action and Human Services Department

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

SUBJECT: INQ 2024-38, Section 2-11.1(j), Conflicting employment prohibited

DATE: February 22, 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 your outside employment as a ticket representative at Hard Rock Stadium.

Facts

You are employed in the Office of Housing Advocacy, which is part of Miami-Dade Community Action and Human Services Department (“CAHSD”). Your job title is Administrative Officer and your job duties primarily include referring clients to housing services like rental assistance, public housing and assistance when facing eviction.

You are seeking approval to engage in outside employment as a Ticket Representative for Hard Rock Stadium, which is a fictitious name registered by South Florida Stadium, LLC. You advise your duties in this outside employment would involve greeting guests, organizing and distributing “will call” tickets, answering guest questions regarding the schedule of events. You plan to engage in this outside employment only during sporting events that occur when you are not scheduled to work for CAHSD and, as far as you know, South Florida Stadium, LLC, is not a County vendor.

Your County job duties do not include any oversight or authority over County vendors or contracts and you are not in a position in your County employment to solicit customers for your outside

employer. You advise that your County duties at CAHSD and your responsibilities in your outside employment would not involve use of the same databases, equipment or other resources. Additionally, you would only engage in outside employment when you were not working for CAHSD and your hours for the two jobs would never overlap. Finally, you would not come into contact with some of the same people in the two jobs.

Your supervisor, Delores Holley, was also consulted and she advised she did not see any conflicts between your County employment and the outside employment you are seeking

Issue

Whether any prohibited conflict of interest may exist between your employment at CAHSD and your proposed outside employment as a ticket agent at Hard Rock Stadium.

Analysis

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit 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. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 22-22; INQ 19-101; INQ 13-28. 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: any 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 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). 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).

For example, in the past, the Ethics Commission has found that a Home Care Aide at CAHSD did not have a conflict of interest in her outside employment at a private nursing home because her public and private roles did not overlap, and she was not in a position to refer potential clients to her private employer. *See* INQ 20-88; *see also* INQ 23-122 (finding that the director of the Office of Housing Advocacy at CAHSD could also engage in outside employment as a realtor as long as she did not participate in any transactions related to her housing advocacy work).

Here, based on the information provided to us, **it appears unlikely that the type of outside employment you are seeking to engage in could impair your independence of judgment as a County employee.**

Opinion

Based on the facts presented here and discussed above, your proposed outside employment poses no prohibited conflict of interest with your county responsibilities.

Nevertheless, you must continue to abide by certain limitations outlined below to avoid a conflict:

- 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* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240,
- 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, for the benefit of your private company or its clients. *See* County Ethics Code Section 2-11.1(h).
- 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 July 1st of each year. *See* County Ethics Code Section 2-11.1(k)(2).¹

¹ The form is available online at <https://www.miamidadade.gov/elections/library/forms/outside-employment-statement.pdf>.

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