



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: James Kohnstamm, Director
Office of Innovation and Economic Development
Miami-Dade Regulatory and Economic Resources Department

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

SUBJECT: INQ 2025-01, Section §2-11.1(k)(2) and (j) - Outside Employment

DATE: January 7, 2025

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding possible ethics issues that may occur as a result of your service to Banesco USA (BUSA) as an Advisory Board Member, while being employed as the Director of the Office of Innovation and Economic Development.

Facts

You, James Kohnstamm, are the Director of the Office of Innovation and Economic Development (“OIED”), which is part of the Miami-Dade Regulatory and Economic Resources Department (“RER”). In that position, your primary responsibilities include managing teams within OIED including the Office of Film and Entertainment, and the Agriculture and International Business Lead programs and initiatives that drive direct economic development to Miami-Dade County; as well as serving as a liaison to Miami-Dade County’s economic development related partners (e.g. Beacon Council, Greater Miami Chamber, Greater Miami CVB). Additionally, you indicate that you have oversight over economic development tax incentives for business job creation and investments, which are approved by the Board of County Commissioners.

Banesco USA is a Florida for profit corporation and a Florida state-chartered bank. Banesco USA’s principal place of business is 3155 NW 77th Avenue Miami, Florida 33122. Banesco USA is related to Banesco Banco Universal, C.A., a Venezuelan financial institution whose principal branch is located in Caracas, Venezuela. Banesco USA has requested that you become one of their advisory board members. Banesco USA has specified that they are interested in you being an advisory board member because you would provide expertise and guidance to Banesco USA Board of Directors regarding the economic development needs of the community,

particularly in areas that align with Banesco USA's mission to become a certified Community Development Financial Institution (CDFI)¹.

Your responsibilities as an advisory board member will include attending and actively participating in quarterly Advisory Board meetings; providing input to the Board of Directors on Banesco USA's adherence to its CDFI mission; completing an annual employment, demographic survey and Conflict of Interest policy acknowledgment; contributing to discussions and initiatives related to community economic development; and staying informed about the economic needs of the community within Banesco USA's service area.

In exchange for your service, Banesco USA will give a \$5,000 honorarium in your name to a charity aligned with community economic development principles and reimburse you for all reasonable travel expenses related to attending advisory board meetings. You have indicated that you do not intend to seek reimbursement for travel expenses, and you believe that parking is free at the Banesco USA's principal place of business in Miami, Florida.

Issue

Whether there is a prohibited conflict of interest that would prevent you, Mr. Kohnstamm, as Director of the Office of Innovation and Economic Development, from serving on the Advisory Board of Banesco USA.

Analysis

Outside employment is 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. 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.”²

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

¹ CDFI Certification is a designation given by the CDFI Fund of the U.S. Department of the Treasury. CDFI Certification conveys recognition to specialized financial institutions serving low-income communities and to people who lack access to financing. CDFI Certification opens the door to opportunities for CDFIs to excel—both operationally and financially. Through Certification, CDFIs are qualified to apply for technical assistance and financial assistance awards, as well as training provided by the CDFI Fund through the Capacity Building Initiative. Through varying strategies, each CDFI contributes to the cultivation of a healthy and stable local economy.

² 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).

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. Additionally, the County Ethics Code provides that, "[a]ll full-time County and municipal employees engaged in any outside employment . . . shall file, under oath, an annual report indicating the source of the outside employment ..." County Ethics Code § 2-11.1(k)(2).

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. Section 2-11.1(j); *see also* section 2-11.1(k).

In INQ 2023-43, the Ethics Commission opined that a Senior Advisor to County's Chief Financial Officer, who held employment affiliations with fourteen (14) healthcare related entities, including some for-profit organizations, was permitted engage in occasional outside employment because none of the outside employer's contracted with the County and her outside employment would not impair her independence of judgment in the performance of her County duties. Similarly, in the instant matter, Banesco USA does not have any business relationship with Miami-Dade County and your service on the advisory board to assist in Banesco USA's efforts to obtain CDFI certification would not impair your independence of judgement. This is because there is no overlap between your public duties and your outside employment with Banesco USA; your outside employment will be performed outside of your County hours, and you will not come into contact with the same persons or entities involved in your County work. Moreover, you do not have access to non-public information as part of your County employment that is, or could be, relevant to your outside employment. *See* RQO 17-01; RQO 16-02.

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest between your County position as Director of Office of Innovation and Economic Development and your role as an advisory board member for Banesco USA, provided that you adhere to the limitations discussed below.

- James Kohnstamm shall not engage in activities that relate in any way to his outside employment during his 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 his 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.
- James Kohnstamm is prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his County employment to derive a personal

benefit or a benefit for Banesco USA. *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.

- James Kohnstamm may not exploit his County position to secure special privileges or exemptions for himself, Banesco USA, or its clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- James Kohnstamm may not represent Banesco USA or its 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 for Banesco USA it is important to note that you would be prohibited from doing any such activities on behalf of Banesco USA or its clients.
- James Kohnstamm shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his 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 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 RER or under state law. Questions regarding possible conflicts based on RER directives should be directed to RER 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 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.