



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Ivonne Villar, Chief Legal Liaison
Miami-Dade County Fire Rescue Department

FROM: Nolen Andrew Bunker, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2025-07, Section 2-11.1(g), Exploitation of official position prohibited;
Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(k),
Prohibition on outside employment.

DATE: January 23, 2025

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest based on the recent election to public office of a County employee.

Facts

Mr. Omar Blanco is employed by the Miami-Dade Fire Rescue Department (“MDFR”) as a Fire Captain. In that role, his responsibilities include command of a fire/rescue battalion or supervisory work in a specialized fire service function.

On November 5, 2024, Mr. Blanco was elected to the Florida House of Representatives. He will serve a term of two years representing Florida House District 115.¹ This legislative district is located in Miami-Dade County and includes the Village of Pinecrest and the Town of Cutler Bay.²

¹ See Omar Blanco, <https://www.flhouse.gov/Sections/Representatives/custom/details.aspx?MemberId=4929&LegislativeTermId=91> (last visited Jan. 17, 2025).

² See District 115, HOUSE DISTRICTS (2020 REDISTRICTING/2022 PLAN), https://edr.state.fl.us/content/redistricting/2020redistricting/house/House115_8x11.pdf, (last visited Jan. 17, 2025).

Issue

Whether there is any prohibited conflict of interest between Mr. Blanco's employment as an MDFR Fire Captain and his election to the Florida House of Representatives.

Analysis

i. State and County Prohibitions Related to Elected Public Office

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") does not contain any provision that prohibits a County official or employee from engaging in political activities outside of the workplace or from running for office. *See* INQ 23-28. However, while not within the jurisdiction of the Ethics Commission, it is important to be aware that there are provisions of State and local law that apply to County officials and employees who seek elected public office.

The Florida Constitution provides that:

No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

Art. II, § 5(a), Fla. Const.

The dispositive question under this provision of the Florida Constitution is whether both positions held are offices. "The term 'office' implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an 'employment' does not comprehend a delegation of any part of the sovereign authority." *State ex rel. Holloway v. Sheats*, 78 Fla. 583, 588 (Fla. 1919). The Florida Attorney General has issued numerous opinions offering guidance on whether a particular public position is an "office" or an "employment." In relation to firefighters, the Florida Attorney General has opined that firefighters who are responsible for general fire-fighting, fire prevention, rescue and emergency medical services work are not "officers" under the Florida Constitution. *See* Op. Att'y Gen. Fla. 93-39. However, the Florida Attorney General has opined that the Fire Chief of a municipal fire department and a county director of emergency operations are officers exercising the sovereign power of the State. *See* Op. Att'y Gen. Fla. 12-28; Op. Att'y Gen. Fla. 93-39. Here, based on the job description of Mr. Blanco's responsibilities, it does not appear that the responsibilities of an MDFR Fire Captain would constitute an "officer" under the Florida Constitution.

Similarly, the provision of Florida law commonly known as "resign-to-run" places restrictions on elected and appointed municipal officers who are seeking election for a federal, state, or local office. *See* Fla. Stat. § 99.012(2). However, it would appear that the "resign-to-run" law would not

apply to Mr. Blanco because his service as an MDR Fire Captain is not that of an elected or appointed municipal officer.

In addition to the above-discussed State law, local law places the following limitations on County officials and employees:

Any appointed official or employee of Miami-Dade County who qualifies as a candidate for election to the office of Miami-Dade County Commissioner, Miami-Dade County Mayor, Miami-Dade County Clerk of the Circuit Court, or Miami-Dade County Property Appraiser shall immediately take a leave of absence from his or her county position until the date of the election and shall, if elected, immediately forfeit his or her county position.

Miami-Dade County Charter § 1.05C. This provision of local law does not appear to apply to Mr. Blanco because he did not seek election as one of the specified County officers.

Finally, Miami-Dade County Administrative Order (“AO”) 7-2 provides that:

any employee of Miami-Dade County who qualifies as a candidate for election to any federal, state or municipal office shall immediately take a leave of absence from his or her County position until the date of the election and shall, if elected, immediately forfeit his or her County position. If the candidate is not elected, he or she shall immediately be reinstated to his or her former position.

In light of County AO 7-2, it appears that, as of the date of his election to the Florida House of Representatives – November 5, 2024, Mr. Blanco immediately forfeited his County position as a Fire Captain. *See* INQ 23-166 (a Police Sergeant with the Miami-Dade Police Department will forfeit his County position if elected to the office of Miami-Dade County Sheriff); INQ 18-215 (a Corrections Officer will forfeit his County position if elected Mayor of the City of West Park in Broward County, Florida).

However, the Ethics Commission does not have the authority to interpret the Florida Constitution, laws, charters, and administrative orders discussed above. We encourage you to contact the Florida Attorney General for interpretations of Florida’s Constitution and Florida statutes. You are encouraged to contact the Miami-Dade County Attorney’s Office for guidance regarding interpretations of the Miami-Dade County charter and administrative orders.

ii. Exploitation of Official Position Prohibited

Section 2-11.1(g) of the County Ethics Code provides that no County employee “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others,” unless expressly permitted by ordinance. In the context of political activity, this generally prohibits the use of public time and resources in support of any political purpose. *See* INQ 22-149; INQ 18-215; INQ 16-21.

This general restriction has been distilled into prohibited conduct in three areas. First, County employees are prohibited from engaging in politicking while on County time. As such, County employees may not engage in activities in support of a political candidacy while engaged in their County work or use County time to further a political candidate. *See* INQ 18-232 (stating a County employee may not participate in political activities during their County workday); INQ 15-26 (stating that a County employee's political activities cannot be conducted while on duty); INQ 09-19 (noting that a County employee can work on a political campaign only while he or she is off duty). This further means that County employees may not engage in political work, such as performing the functions of an elected political office, while on County time. *See* INQ 17-49 (an employee of the Miami-Dade Information Technology Department serving as a Representative for Precinct #613 on the Miami-Dade Democratic Executive Committee may not engage in this political activity during County work hours); *see also* INQ 20-61 (an employee of a County Commissioner seeking election as District 20 Committeeman for the Miami-Dade Republican Party Executive Committee may not engage in political activities while on County time).

Second, County employees cannot use public resources for political purposes. As such, County employees may not wear their uniform while engaging in political campaigning. *See* INQ 09-19.³ County employees also may not use office stationery, telephones, computers, or public vehicles in furtherance of their political activity. *See* INQ 15-26 (a County employee may participate in a friend's political campaign, but she may not use the enumerated resources). It is also prohibited to use government resources to direct members of the public to a political candidate's campaign website or campaign contact information. *See* INQ 18-200 (a government social media website cannot redirect members of the public to a campaign website). Similarly, political e-mails, including fundraising requests, must not originate from County computers or e-mail accounts. *See* INQ 16-141. With regard to title, it is generally permissible for a public official to use his or her official title in the context of political campaign activity so long as public resources are not used in connection therewith. *See* RQO 05-06 (finding that a member of the North Miami Beach City Council may use his official title in campaign stationery while campaigning for City Mayor); INQ 16-38 (finding that a County Commissioner may use her title when engaging in campaign activities on behalf of other political candidates).

Third, County employees are prohibited from coercing or attempting to coerce their colleagues or members of the public to take a political position. *See* INQ 18-232 (a staff member for a County Commissioner hosting a fundraiser may not coerce or intimidate others to make contributions); INQ 17-49 (an employee of the Information Technology Department serving as Miami-Dade Democratic Executive Committee Representative may not use his County position to get colleagues to take political positions).⁴

³ However, the Florida Commission on Ethics has opined that a deputy sheriff may wear his uniform and associated equipment while campaigning where the policy of the Sheriff's Office did not prohibit wearing of said uniform and associated equipment while off-duty at campaign events and with the Sheriff's permission. *See* Fla. Comm'n on Ethics Op. 07-24.

⁴ Florida law, in a provision known as the "Little Hatch Act," also provides that no County or municipal officer or employee shall "use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result

Applying these provisions to Mr. Blanco, assuming he did not forfeit his County employment pursuant to County AO 7-2, he must abide by each of the restrictions outlined above, meaning he must not use County time or County resources in furtherance of his political activities, and he may not coerce or attempt to coerce his colleagues or members of the public to support his political activities. As such, Mr. Blanco must use his annual leave time, or take an appropriately approved leave of absence, when engaging in activities related to the political office to which he was elected – Florida State Representative. *See* INQ 20-61; INQ 17-49. Additionally, he should conform his conduct to the limitations contained in the Ethics Memorandum regarding: Limitations on Political Activities of County and Municipal Officers and Employees.⁵ *See* INQ 22-149.

Finally, while the Ethics Commission does not have jurisdiction to interpret State law, Mr. Blanco should be aware that State law has a similar provision prohibiting the misuse of one's public position. *See* Fla. Stat. § 112.313(6).

iii. Prohibition on Outside Employment & Conflicting Employment Prohibited

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. With regard to service in an elected office constituting outside employment, a Detective for the City of Miami Police Department was engaged in outside employment when serving as an elected Council Member in the City of Homestead. *See* INQ 11-16. However, a County employee serving as an elected committeeman for the Republican Executive Committee was not engaged in outside employment because the position was uncompensated. *See* INQ 12-153. Additionally, the Florida Commission on Ethics has opined, in interpreting a similar provision of Florida ethics law, that “the position of city council member constitutes the holding of an office, rather than an employment or contractual relationship.” Fla. Comm’n on Ethics Op. 02-4.

Here, assuming that Mr. Blanco did not forfeit his County employment pursuant to County AO 7-2, it would appear that Mr. Blanco’s service as a Florida State Representative would constitute outside employment for purposes of the County Ethics Code based on prior guidance given to municipal employees. *See* RQO 17-03; INQ 11-16. This is because he will receive compensation in the amount of \$18,000.00 from the State of Florida for his service as a Florida State Representative. *See* Fla. Stat. § 11.13(1)(a)2. As such, he will receive compensation for non-County activity in exchange for his service in State office, and as such, is engaged in outside employment for purposes of the County Ethics Code. *See* RQO 17-03; INQ 11-16; *cf.* INQ 12-153.

thereof.” Fla. Stat. § 104.31(1)(a). The law further prohibits County or municipal officers or employees from coercing or attempting to coerce a fellow County or municipal officer or employee “to pay, lend, or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes.” Fla. Stat. § 104.31(1)(b).

⁵ Available at: <https://documents.miamidade.gov/ethics/memos/political-activities.pdf>.

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 AO 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.” 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 individual has decision-making authority over the same subject matter that the outside employment concerns; whether the individual solicits business or customers in the same area over which he or she has jurisdiction; whether the individual 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 individual serves funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 21-66.

Here, it does not appear that Mr. Blanco’s service as a Florida State Representative will conflict with his County employment: there is no overlap between his MDFR duties as a Fire Captain and his responsibilities as a Florida State Representative, neither position has decision-making authority over the other, he is unlikely to come into contact with the same or similar people in either position, and there is no direct business between the Florida House of Representatives and MDFR. *See* RQO 17-01; INQ 21-66.

Additionally, Mr. Blanco must file an Outside Employment Statement⁶ with the Ethics Commission by noon on July 1st of each year for the prior year’s outside employment. *See* County Ethics Code § 2-11.1(k)(2); INQ 11-16 (requiring a City of Miami Police Department Detective who was elected as a Council Member of the City of Homestead to report income earned from his service as a Council Member).

Finally, County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* County AO 7-1. 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* County AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. Whether Mr. Blanco’s service as a Florida State Representative constitutes outside employment for purposes of County AO 7-1, and therefore whether the MDFR Fire Chief has the discretion to deny Mr. Blanco permission to serve as a Florida State Representative, is not a matter within the jurisdiction of the Ethics Commission; rather, you are encouraged to contact the Miami-Dade County Attorney’s Office for guidance regarding interpretations of Miami-Dade County administrative orders.

Opinion

Based on the facts presented here and discussed above, there is no prohibited conflict of interest in the County Ethics Code that would prevent Mr. Blanco from serving as an elected Florida State

⁶ Mr. Blanco can find the required form online at: <https://documents.miamidade.gov/ethics/outside-employment/outside-employment-statement.pdf>.

Representative in the Florida House of Representatives, provided that he abides by the restrictions discussed above. *See* County Ethics Code §§ 2-11.1(g), (j), (k); INQ 17-49; INQ 11-16.

However, it appears that Mr. Blanco forfeited his County employment as a Fire Captain with MDFR when he was elected to the Florida House of Representatives for District 115 on November 5, 2024, pursuant to County Administrative Order 7-2. Nevertheless, you are reminded that the Ethics Commission does not have jurisdiction to interpret County Administrative Order 7-2, and you are encouraged to contact the Miami-Dade County Attorney's Office for guidance regarding interpretations of Miami-Dade County ordinances and administrative orders outside of the 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.

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.