Diaz-Greco, Gilma M. (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, February 18, 2014 10:44 AM
To: 'NCubela@miamigov.com'
Cc: Centorino, Joseph (COE); 'De Souza, Lara'
Subject: RE: Conflict of Interest Opinion INQ 14-36
Attachments: Outside_Employment_Guidelines_2013.pdf

Mr. Cubela,

I apologize for the delay in our response. It took some time to obtain all the necessary information needed to respond. You and your supervisor Lara Souza have inquired regarding restrictions on outside employment.

Background

You are employed on a full time basis as a City of Miami parks manager managing the Ashe Buchholz Tennis Center (AB Tennis Center) at two City of Miami parks, Moore Park and Bryan Park (M & B parks). Your job responsibilities include managing tennis programs and providing tennis instruction at these parks. You have asked whether there would be a prohibited conflict of interest for you to work for the organization First Serve Miami (FSM) as a part–time employee.

FSM is an organization that provides tennis instruction and sponsorships for youths to compete in local, state and national tennis competitions. Under agreements with the City of Miami, it uses AB Tennis Center's facilities at M & B parks to run its tennis programs. You interact often with First Serve is several ways. As park manager at M & B parks, part of your responsibilities include working with First Serve to schedule court time for their programs. First Serve tennis lessons are generally scheduled in the evening. We note that your work schedule as park manager for M & B parks sometimes includes working in the evenings at the same time that First Serve runs its programs at these parks. Further, some of your children participate in the First Serve program. They receive tennis lessons from First Serve, and participate in tennis matches and other regularly scheduled activities that First Serve provides through its tennis programs.

If you were to be employed by FSM your employment responsibilities would include providing tennis instruction and program management for them. You would clock out of your city employment at the AB Tennis Center, and then clock-in for your compensated part-time employment with FSM at the same parks where you work as park manager.

Analysis

In general, a fulltime City employee must not engage in outside employment that would conflict with his duties to the City or impair his independence of judgment in the performance of his public duties. *See*, Secs. 2-11.1 (j) and (k).

Conflicting employment frequently occurs when the outside work is closely related to or similar to the work the employee performs for the city, occurs in the same facilities the municipal employee works at, and involves interaction with the same vendors or organizations that an employee interacts with in their municipal work. I have attached a document that outlines types of outside employment fact patterns that may create conflicting outside employment.

In this case, your work as park manager requires you to interact regularly with FSM to schedule their activities, and your work providing tennis instruction and program management for FSM would be very closely related and similar to the work that you perform for the City of Miami. Further, it would occur in the same park facilities in which you work as a

City of Miami full time employee. In addition, your children participate in FSM programs at these parks also. If an employee's outside employment is totally unrelated to their municipal employment conflicts would generally not arise. For example, if you as a parks manager responsible for tennis programs worked at a men's clothing store in a mall, a conflict would generally not occur. However, in this case there are many factors that tie your municipal work as parks manager to FMS. Considering all of the factors enumerated here, your work with FSM **would create conflicting employment.**

Furthermore, City employees are also subject to the State ethics law, which states, "[N]or shall an … employee of an agency have or hold any employment or contractual relationship that will create a *continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties* or that would impede the full and faithful discharge of his or her public duties. (Fla. Stat.112.313(7)(a) (2012) (emphasis added).)State law is intended to prevent situations in which private economic considerations may override the faithful discharge of public responsibilities. Given the fact listed above, frequently recurring conflicts would probably occur in this instance.

Please do not hesitate to contact us if we may be of further assistance.

Best regards,

From: Ethics (COE)
Sent: Wednesday, November 06, 2013 3:34 PM
To: Frigo, Victoria (COE); Diaz-Greco, Gilma M. (COE)
Subject: FW: Conflict of Interest

From: Cubela, Noel [mailto:NCubela@miamigov.com]
Sent: Wednesday, November 06, 2013 1:56 PM
To: Ethics (COE)
Subject: Conflict of Interest

Good Day,

My name is Noel Cubela and I am the Park II for City of Miami Parks and I manage the Ashe Buchhoz Tennis Center at Moore Park and Bryan Park. I manage the tennis programs and provide tennis lessons. At the Ashe Buchholz Tennis Center there is a not-for-profit organization, First Serve Miami (f/k/a Greater Miami Tennis and Education Foundation) who provides tennis lessons and youth sponsorship to compete in local, state, and national tennis tournaments/competitions. I have been offered to work on a part-time basis with First Serve at the Ashe Buchholz Tennis Center after I clock-out of my City job to provide lessons and to travel with the youth who are competing at tournaments on the weekends.

I would like an opinion if this would be a conflict of interest. I utilize Kronos (automated time in/time out system) to clock out City time and therefore can show when I am no longer on City time. I would be teaching tennis lessons to youth enrolled in the First Serve Program at the Tennis Center and would be accompanying them to tournaments outside of CIty of Miami jurisdication on the weekends.

I appreciate your time and opinion is appreciated.

Regards,

Noel Cubela
Park Manager II