

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



MEMORANDUM

TO: Commission on Ethics and Public Trust

FROM: COE Staff Attorneys

Re: Outside employment guidelines

DATE: Last amended, September 2014

The purpose of this memorandum is to clarify and educate County and municipal employees as to what activities are considered “outside employment” requiring prior approval and disclosure.

Sec. 2-11.1(k) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance (the Ordinance) provides that a County or municipal employee may not receive compensation for his or her services as an officer or employee from any source other than the County, except as permitted in Sec. 2-11 of the Miami-Dade County Code.

According to Sec. 2-11, a County employee may accept outside employment as long as it is not contrary, detrimental or adverse to the interest of the County and as long as the employee first obtains written approval from the department head of the department where the employee is assigned. For County employees, approval is sought by filling out a Request for Outside Employment form¹, pursuant to Miami-Dade County Administrative Order 7-1. Municipal employees should fill out a comparable form designated by the municipality.

Once the employee has obtained permission to engage in outside employment, the employee must file an Outside Employment Statement² with the County Elections department³ by noon on July 1st of each year. The source of income filed each July 1st must disclose income received by the employee from outside employment in the preceding calendar year. In other words, an employee who engaged in outside employment during 2013 must file an Outside Employment

¹ Request for Outside Employment form is available at: <http://www.miamidade.gov/elections/library/forms/outside-employment-request.pdf>, and ethics.miamidade.gov.

² Outside Employment Statement form is available at: : <http://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>, and ethics.miamidade.gov.

³A municipal employee engaged in outside employment must file his/her outside employment statement with the clerk of the municipality where he/she is employed.

Statement by July 1st, 2014, disclosing both the source of his or her outside income and the amount.

County and municipal employees and their supervisors must also be aware of Sec. 2-11.1(j) of the ordinance which states that no full-time (*See* INQ 06-172) County or municipal employee, may “accept other employment which would impair his or her independence of judgment in the performance of his or her duties.” The following may be indicative of potential conflicts between an employee’s duties to the public and duties to his/her outside employer:

- The outside employment is related to the employee’s public position.
- The outside employment consists of work that is similar to work done by the public employee.
- The public employee will come in contact with the same or similar people or entities in both his/her outside employment and in his/her public position, *e.g.*, similar clients, suppliers, or subcontractors.
- The public employee uses the same or similar resources in his/her outside employment as he/she uses in his public position, *e.g.*, similar tools, similar materials, or similar databases.
- At least a portion of the outside employment can only be accomplished during the same business hours in which the employee is required to work for the public.
- The employee works in a public position in which he/she has the opportunity to refer vendors, contractors, bidders, or members of the public to the his/her outside employer or related private business entities.
- The public employee works in a public position in which he/she has the opportunity to recruit vendors, contractors, bidders, or members of the public to use his/her outside employment products or services.
- The outside employment requires that the public employee interact with employees or boards of the same government entity in which he/she is employed, even for routine matters.
- The public employee has access through his public position to non-public information that is relevant to his/her outside employment.
- The public employee works in a department that funds or has a contract with his/her outside employer.
- The outside employment is likely to place the public employee in situations in which private economic considerations may override the faithful discharge of his/her public responsibilities.

It is also important for these individuals to be aware of Sec. 2-11.1(h), which states that no County or municipal employee may “accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by him or her by reason of his or her official position...with the County [or municipality].”

Employees who are required to file a financial disclosure form (County Source of Income Statement or State Form 1) should note that their outside employment must also be disclosed on these forms.

Finally, it is important for employees to know that the use of the public's time and/or resources in the performance of outside employment may constitute an "exploitation of official position" in violation of Sec. 2-11.1(g).

Activities that constitute outside employment and consequently require prior permission and disclosure are laid out by category below.

Paid Employment

- Compensated employment for any person, firm, corporation or entity (including a non-profit entity) is considered outside employment.
- Any consulting firm or business owned by the employee regardless of whether the firm/business is officially incorporated or whether the firm/business is generating income for the employee is considered outside employment. (INQ 13-34, 12-131)
- Providing either paid or unpaid services to any firm/business including, but not limited to, those owned by an immediate family member is considered outside employment.
 - Examples of "providing services" include, but are not limited to: bookkeeping, legal services, marketing services, servicing clients, among others.
 - "Immediate family" is defined as, "spouse, domestic partner, parents, stepparents, children and stepchildren..." Sec. 2-11.1 (b)(9) of the Ordinance.
- Passive investment in a corporation is not considered outside employment. (RQO 08-36)
- Serving as an off-duty police officer (whether or not coordinated by the local government entity) is considered outside employment if the officer is paid directly by the third party. (INQ 03-25) If the officer is paid through the department, it is not considered outside employment. (INQ 03-16)

Business ownership

- Being listed as an officer in a spouse's corporation where the employee performs no services for that corporation and receives no income from it is not considered outside employment. (INQ 05-37)
- The setting up of an S-Corporation to protect personal assets is not considered outside employment. (INQ 06-136)

Rental Properties

- Ownership of 3 or more rental units is considered outside employment unless a management company is hired to manage the units for the owner. (RQO 06-48, INQ 07-83)

Board Membership (For-Profit Corporations)

- Compensated board membership on a for-profit board is considered outside employment.
- Uncompensated board membership on a for-profit board if the employee is actively involved in the management of the for-profit entity is considered outside employment.
- Membership on an inactive board does not require disclosure if the corporation has been inactive for a period of two (2) years and the corporation is listed as inactive in the State's records.

Board Membership (Non-Profit Corporations)

- Uncompensated service on a non-profit entity's board is not considered outside employment.

Internet Sales

- Running a web-based business is considered outside employment regardless of whether the employee generates any income.
- Occasionally selling items on Ebay (or other internet sales sites) is not considered outside employment. (INQ 05-19)

Volunteer work

- Traditional volunteer work for a non-profit corporation is not considered outside employment. (INQ 09-184)
- Serving as a volunteer Associate Pastor at a church, which occasionally collects "love offerings" on his/her behalf is considered outside employment. (INQ 05-30)

Military Service

- Service in the reserve United States Armed forces is not considered outside employment. (RQO 14-03)