

Diaz-Greco, Gilma M. (COE)

Subject: Michael Mut, Public Information Officer, Miami-Dade Department of Solid Waste Management (Outside Employment) INQ 17-171,

INQ 17-171 Mut

From: Turay, Radia (COE)
Sent: Tuesday, August 08, 2017 2:36 PM
To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Sanchez, Rodzandra (COE) <Rodzandra.Sanchez@miamidade.gov>
Subject: FW: INQ 17-171, Michael Mut, Public Information Officer, Miami-Dade Department of Solid Waste Management

From: Turay, Radia (COE)
Sent: Monday, August 07, 2017 3:45 PM
To: Mut, Michael (DSWM) <Michael.Mut@miamidade.gov>
Cc: Marlow, Myra (DSWM) <Myra.Marlow@miamidade.gov>
Subject: INQ 17-171, Michael Mut, Public Information Officer, Miami-Dade Department of Solid Waste Management

Dear Mr. Mut,

You have inquired about possible conflicts of interest between your County employment and your proposed outside employment.

Background

You are employed at the Miami-Dade County Department of Solid Waste Management (DSWM), as a Public Information Officer. Your County job duties include providing public information and outreach for mosquito control efforts by the County.

You are seeking to engage in outside employment as the Founder/Consultant for Mut Communications. In your role as Founder/Consultant you will help clients secure publicity for their business; manage their social media platforms; run their email marketing programs; book live entertainment dates; and assist with business development activities. Your clients will include private companies, entertainment venues, entertainers, individuals, musical acts, and non-profit organizations. You will not compete for any County contracts; nor will you service any County contract for a client.

Legal Analysis

The Miami-Dade County Ethics Code at Section 2-11.1(j), prohibits *conflicting* outside employment: “No [County employee] shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.” See also AO 7-1 (County’s administrative order reiterates that, “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”). The Ethics Ordinance is intended to prevent both corrupt behavior and an appearance of corruption where a public employee may be perceived as having conflicting loyalties that interfere with his or her independence of judgment in making a decision or recommendation connected to his or her official duties. See INQ 15-49. 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. With respect to County employees, approval to engage in outside employment is at the discretion of the employee's supervisor, who may consider whether an appearance of impropriety exists. See INQ 15-22.

In general, if an employee's outside employment is totally unrelated to his/her County employment, conflicts would generally not arise. In previous opinions, the Ethics Commission has found that outside employment conflicts with government employment *when the two pursuits overlap or are closely related*. See RQO 12-11, INQ 12-159. For example, in RQO 15-03, the Commission found that an IT Senior Analyst should not be permitted to engage in outside employment as an IT consultant for a private client because the outside employment was closely related to the work he performed for the County, and divided loyalties were likely to develop between his County employment and his private employment.

Conflicting outside employment has also been found in the following situations:

- *When the County employee works in a position where he/she has the opportunity to recruit members of the public to use his/her outside employment; the County employee has access to non-public information which may become relevant to his/her private employer.* For example, in RQO 99-50, the Ethics Commission opined that an Airport employee should not be allowed to engage in outside employment with an Airport contractor because the outside employment might improperly affect his relationships with his County co-workers and might induce him to use confidential information to benefit his private employer;
- *When the County employee's private outside employment may place him/her in a situation where his/her private economic considerations may override the faithful discharge of his/her County duties.* See RQO 15-03.
- *If the County employee provides services for County residents in his/her County department and then provides services for the same County residents in his/her outside employment;*
- *If the County employee were to solicit business for his/her outside employment while working at the County department.* Of equal concern would be if other County personnel refer County residents to the County employee. See §2-11.1(p), County Ethics Code; INQ 07-94.

I have attached the Ethics Commission "Outside Employment Guidelines" Memorandum (September 2014), which outlines a number of additional fact patterns that may create conflicting employment. These are examples of situations which indicate a conflict between the County's interests and the outside employment. However, A County department may also impose stricter guidelines on outside employment than are found in the County Ethics Code, Ethics Commission guidelines or opinions.

After a review of all of the facts presented, it appears unlikely that the outside employment that you are seeking to engage in would impair your independence of judgement in the performance of your duties for the following reasons based on representations made by you:

- Mut Communications does not contract with and is not seeking to contract with DSWM.
- Mut Communications will not perform any work for County vendors, nor service any vendor contract with the County.
- Mut Communications will perform work for private individuals and entities, so it is therefore unlikely that you will deal with the same persons or entities in your outside employment that you deal with during your job functions at DSWM.
- Your position with the County does not appear to be one through which you could solicit business for his outside employment while working at the County department.
- You have represented that you will not perform any work for individuals or private entities that have positions adverse to the County.
- Your work with Mut Communications would occur outside of your County hours of employment.

As a reminder, pursuant to 2-11 of the County Code, County employees are required to request permission to engage in outside employment from their supervisor on a yearly basis. In addition, Section 2-11.1(k)(2) of the County's Ethics Code requires filing a financial disclosure form on a yearly basis. County employees are cautioned that they may not engage in any activity which would require them to disclose confidential information acquired by reason of their official position,

nor use such information directly or indirectly for their personal gain or benefit. See Section 2-11.1(h), County Ethics Code. Lastly, a County employee may not use his or her official County position to secure privileges or exemptions for themselves or others. See Section 2-11.1(g), County Ethics Code.

This opinion is based on the facts presented. Should a situation arise in which one of your clients through your outside employment is doing business or seeking to do business with the County, please seek an opinion with our office.

Sincerely,

RADIA TURAY

Staff Attorney
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 350-0601
Fax: (305) 579-0273
Ethics.miamidade.gov

From: Mut, Michael (DSWM)
Sent: Friday, June 23, 2017 9:44 AM
To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: RE: Outside Employment

Good morning, Radia – please see my responses below in **bold** and let me know if you need anything else. Thanks...

Best regards,

Michael Mut
Public Information Officer
Miami-Dade County – Solid Waste Management
Public Information & Outreach Division
305.375.3316 – office
305.310.1451 – cell
MiamiDade.gov/Mosquito
[Facebook.com/305Mosquito](https://www.facebook.com/305Mosquito)
[Twitter.com/305Mosquito](https://twitter.com/305Mosquito)
[Watch our videos on YouTube](#)

From: Turay, Radia (COE)
Sent: Thursday, June 22, 2017 11:21 AM
To: Mut, Michael (DSWM) <Michael.Mut@miamidade.gov>
Subject: Outside Employment

Hello Mr. Mut,

My name is Radia Turay. I am a staff attorney at the Miami-Dade Commission on Ethics. I was assigned to review your request for outside employment to determine whether it presents any conflicts of interest with the County Ethics Code. Please provide responses to the following questions:

- 1) Please describe the job responsibilities that you will have as founder/consultant for Mut Communications: **help clients secure publicity for their businesses, manage their social media platforms, run their email marketing programs, book live entertainment dates, assist with business development activities.**
- 2) Please indicate for whom Mut Communications will provide services (I.e. county vendor/contractors; the county; municipalities; private individuals)? **Private companies, entertainment venues, entertainers, individuals, musical acts, non-profit organizations, and the like.**
- 3) Please provide the name of any county vendor or contractor that Mut Communications will perform work for? **N/A**
- 4) Does the county vendor of contractor that Mut Communications works for have a contract with the County or have ? **N/A**
- 5) Would Mut Communications be servicing that county vendor or contractors contract with the County? **No**
- 6) Would Mut Communications perform any work for individuals/companies that have positions adverse to the County? **No**
- 7) Would Mut Communications compete for any County contracts? **No**
- 8) Would you interact with the same government employees/ department in your outside employment as you would in your position at the County? **No**
- 9) Do you work in a position with the County that you have the opportunity to recruit vendors, contractors, bidders, or members of the public to use your outside employment products or services? **No**

Thanks for your anticipated cooperation with this matter.

Sincerely,

RADIA TURAY

Staff Attorney

Miami-Dade Commission on Ethics and Public Trust

19 W. Flagler Street, Suite 820

Miami, FL 33130

Tel: (305) 350-0601

Fax: (305) 579-0273

Ethics.miamidade.gov