



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Isidoro Lopez
Research Analyst
Office of the Commission Auditor

FROM: Jose J. Arrojo
Executive Director

SUBJECT: INQ 2020-119, Section 2-11.1 (j), Conflicting Employment Prohibited; and
Section 2-11.1 (e), Gifts

DATE: November 4, 2020

CC: COE Legal Staff

Thank you contacting the Miami Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to your position as President of the South Florida Chapter of the American Society for Public Administration (ASPAs) and contemplated solicitation activities on behalf of that entity.

Facts:

The requester has advised that he is a Research Analyst with the Office of the Commission Auditor. He would like to continue to serve as the South Florida Chapter President for the American Society for Public Administration (ASPAs) and would also like to participate in donation solicitation activities on behalf of ASPAs. Mr. Lopez's position with ASPAs is unpaid and voluntary. All ASPAs activities occur outside of his County work hours and would be performed using his personal and ASPAs resources.

ASPAs self-describes as a professional association that sponsors conferences and provides professional services primarily to those who study the implementation of government policy, public administration, and programs of civil society. It is a nonprofit organization as defined under Section 501(c)(3) of the Internal Revenue Code. It supports its activities through a combination of membership fees, course fees, subscriptions, and donations.

Issues:

Whether your continuing service as the South Florida Chapter President for the ASPA is permissible under Section 2-11.1 (j) of the County Ethics Code relating to conflicting outside employment.

Whether in your capacity as the ASPA Chapter President, your participation in donation solicitation activities on behalf of ASPA, a nonprofit organization as defined under Section 501(c)(3) of the Internal Revenue Code, is permissible under Section 2-11.1 (e) of the County Ethics Code relating to gifts.

Discussion and Opinion:

Serving as the Executive Director, President or Manager of a nonprofit on a compensated or uncompensated basis, when actively involved in the administration of that entity may constitute outside employment. (*See generally* RQO 17-03) Section 2-11.1(j) of the County Ethics Code prohibits County employees from engaging in outside employment that creates a conflict of interest between the public duties and his or her personal interests. (*See also* Miami-Dade Administrative Order 7-1)

In this instance, your uncompensated and voluntary engagement as the South Florida Chapter President of ASPA, does not constitute prohibited conflicting employment because of the academic and professional nature of the nonprofit society that is funded primarily through membership fees, course fees, subscriptions and donations. Also, you have advised that your service to ASPA will occur outside of your County hours and would be performed using your personal and ASPA resources. (*See* INQ 19-60)

While your local chapter leadership engagement with ASPA does not constitute prohibited conflicting employment, we recommend that in order to avoid the appearance of impropriety, should ASPA seek grants, donations or services from the County, that you do not attempt to influence any official decision by the County to benefit the nonprofit organization in any way. Please be advised that the County Ethics Commission has interpreted this prohibition very expansively to include any communications, in any form, intended to influence an individual within the County to take an official action. (*See* INQ 16-48, 16-22, INQ 14-170, INQ 12-13, INQ 11-01, and INQ 10-201)

With respect to fundraising on behalf ASPA, the County Ethics Code prohibits County employees from soliciting or accepting any gifts in exchange for an official action. Miami-Dade Code Sec. 2-11.1(e)(3). This obviously means that you could not solicit or accept a gift on behalf of ASPA in exchange for any official action you might take, or decline to take, as a County employee.

However, outside of a prohibited *quid pro quo* scenario, solicitation of gifts on behalf of a non-profit organization is not generally prohibited, particularly where an employee is not compensated by the 501(c)(3) entity. (*See generally* INQ 16-93) You should nevertheless avoid direct, targeted solicitations of County vendors and lobbyists on behalf of ASPA, even if the solicitation is not prohibited, in order to avoid situations where a County vendor

or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. (See INQ 16-275)

Finally, as long as you are engaged in outside employment you must obtain permission to engage in outside employment from the Commission Auditor. (Section 2-11.1 (k), County Ethics Code)

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics and Public Trust.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.