



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Daniel Drury, Firefighter/Emergency Medical Technician, Miami-Dade Fire Rescue Department

FROM: Gilma Diaz-Greco, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-43

DATE: May 11, 2020

CC: All COE Legal Staff; Alan Cominsky, Interim Chief, Miami-Dade Fire Rescue Department (MDFR); Maria Reyes, Division Manager, Business Planning and Financial Services, MDRF; Jeanne Gonzalez, Occupational Health Specialist, Occupational Health Office, MDRF

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts:

You are employed at MDRF as a Firefighter/Emergency Medical Technician. You are currently assigned to MDRF's Business Planning and Financial Services Division performing work administering that division's Medical Services Patient Surveys process. You would like to engage in outside employment in Monroe County as the Chief of the Tavernier Volunteer Fire Department (TVFD). You have previously been granted permission to engage in this occupation, but no ethics review had been conducted. Upon the yearly renewal of your outside employment request required by Miami-Dade Code 2-11, MDRF requested an Ethics review in order to ensure no conflicts of interest exist between your County job duties and those of your outside employment.

Issue:

Whether any prohibited conflicts of interest may exist between your employment at MDFR administering the Medical Services Patient Surveys process and your proposed outside employment as the Chief of the City of Tavernier Volunteer Fire Department (TVFD).

Background:

As background, you have been placed on permanent restricted duty at MDFR, and you are currently assigned to MDFR's Business Planning and Financial Services Division. Your job duties include administration of MDFR's Medical Services Patient Surveys that are used by the Division to obtain feedback from patients regarding the medical, interpersonal, and professional treatment provided by MDFR personnel. Your job duties do not involve the selection, management, or oversight of MDFR firefighters or EMTs, or any involvement in the selection, administration, or oversight of MDFR or other County vendors.

You are seeking outside employment as Chief of the TVFD, a volunteer Fire Department located in Tavernier, Monroe County. This work takes place one day a week, on Wednesdays from 7 to 10 pm. You advise that your TVFD duties involve administrative work, general membership recruitment, special events coordination, fundraising, and serving as Chief Fire Officer of TVFD line officers and general membership. TVFD works with other Monroe County Fire Departments, but does not overlap in operations, training, or other functions with MDFR. Consequently, your role as Fire chief for TVFD would not cause you to interact with the same or similar entities with which you interact in your current County duties. Furthermore, this work would occur outside of your MDFR work hours and would not require use of any County resources.

We have consulted with your supervisor who confirmed that your present County job duties do not involve the selection, administration, or oversight of any County Firefighters or EMTs nor any involvement or oversight of MDFR vendors and that your TVFD work hours would not conflict with your County work schedule.

Analysis and Opinion

Several sections of the Miami-Dade Code of Ethics, and other relevant Miami-Dade administrative Orders and ordinances must be considered in analyzing whether a County employee's outside employment may create prohibited conflicts of interest.

- Sections 2-11.1(j) and (k) prohibit County employees from engaging in outside employment which would impair the employee's independence of judgement in the performance of his or her public duties. Furthermore, County employees may not engage in outside employment that creates a conflict between the employee's public duties and his or her personal interests. Miami-Dade Administrative Order 7-1.

- Miami-Dade Code Section 2-11 prohibits County employees from using County time, materials, or equipment in outside employment and from engaging in outside employment that would be adverse or detrimental to the interests of the County.
- Section (g) of the County Ethics Code prohibits County employees from using their official position to obtain special privileges or exemptions for themselves or their outside employers. Overseeing, administering, being involved in the selection or recommendation of any current or future contract that the employee's outside employer may have with the county, and/or the use of County time or resources in the performance of outside employment, may constitute an "exploitation of official position" in violation of Section 2-11.1(g) of the County Ethics Code.

In this instance, your outside employment working as Fire Chief for TVFD shares some of the knowledge base that you have acquired because of your work for the County as a firefighter and EMT. However, conflicts are unlikely to exist between your County duties and your outside employment because your current duty assignment with the MDRF involves administrative duties instead of firefighter or EMT duties; it does not involve oversight or management of firefighters, EMTs, or other MDRF operation; it does not involve selection, oversight, or administration of any County vendors; the work takes place in Monroe County with no interaction between TVFD and MDRF, and your role as TVFD Fire Chief in Monroe County would not overlap or compete with services provided by MDRF. Furthermore, your outside employment would occur outside of your County hours and would be performed using TVFD resources. Consequently, based on the facts you have presented and after discussing this matter with your MDRF supervisor, we concur with her that it is not likely that a prohibited conflict of interest would exist between your public MDRF duties and your outside employment. *See* Outside Employment Guidelines (2019).

Nevertheless, you must abide by certain limitations and cautions outlined below:

- You may not use County time or resources in your outside employment. Miami-Dade Code Sec. 2-11.
- With respect to fundraising on behalf of TVFD, the County Ethics Code prohibits County employees from soliciting any gifts in exchange for an official action. Miami-Dade Code Sec. 2-11.1(e)(3). This means that you could not accept a gift on behalf of TVFD in exchange for any official action you take as a **County** employee. Solicitation of gifts on behalf of a non-profit organization is not generally prohibited. *See* Miami-Dade Code Sec. 2-11.1 (e). Nonetheless, direct, targeted solicitations of County vendors and lobbyists for any special cause, even when such solicitations are not prohibited, are discouraged 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. INQ 16-275 and INQ 19-60.
- Pursuant to Miami-Dade Code Section 2-11.1(g), you may not use your County position to obtain special privileges or exemptions for TVFD. Furthermore, overseeing,

administering, being involved in the selection, or recommendation of any future contract that TVFD might enter into with the County, and/or the use of County time or resources in the performance of your outside employment, may constitute an “exploitation of official position” in violation of Section 2-11.1(g) of the County Ethics Code.

- You may not disclose any confidential information, or use any confidential information gained in your County employment. Miami-Dade Code Sec. 2-11.1(h).
- You may not represent TVFD before any County board or agency. Miami-Dade Code 2-11.1(M)(1) and RQO 04-173.

Permission to Engage in Outside Employment and Outside Employment Statement

Please note that as long as you are engaged in outside employment you must obtain permission to engage in outside employment in order for MDR to review any changes in your role with TVFD. You must also file an outside employment financial disclosure form ([Outside Employment Statement](#)), reporting any money received from TVFD (you would enter \$0.00 if you received no money). County Ethics Code Secs. 2-11 and 2-11.1 (k)(2).

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. If the facts associated with your County job duties or your outside employment duties change, please contact us for additional guidance. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics. Questions regarding your restricted duty MDR assignments should be referred to MDR’s Occupational Health Office.

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.