



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Ernice Elie-Stirrup, Correctional Lieutenant, Miami Dade County
Corrections and Rehabilitation Department

FROM: Gilma Diaz-Greco, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2021-136 Outside Employment County Ethics Code Section 2-
11.1(j),(k), (g)

DATE: 10-19-21

CC: COE Legal Staff; Captain Melissa Johnson and Legal Advisor Pat Jones-
Cummings; Miami Dade County Corrections and Rehabilitation
Department

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

Facts:

You are employed as a Correctional Lieutenant at the Miami Dade County Corrections and Rehabilitation Department (MDCR). Your current job duties involve oversight and supervision to Special Internal Affairs Bureau (SIAB) investigators conducting investigations in all areas of Miami-Dade County. The responsibilities of your position include but are not limited to:

- Supervising investigators in your chain of command who conduct investigations of Corrections employees charged with a variety of misconduct where complaints alleging misconduct have been filed against an employee by inmates, staff, or the public.
- Reviewing and ensuring that complaints against Corrections employees are properly classified and investigated in accordance with the laws of the jurisdiction, including County and departmental policy. This work also involves considering evidence for relevancy and to ensure the facts and circumstances are examined and represented in investigative cases under your supervision.

- Making determinations and assessments of investigations, recommending allegations in the complaint process, and assigning cases to investigators.
- Providing guidance to sergeants under your supervision about the course of action of an investigation; about the process of identifying witnesses/subjects, determining allegations, reviewing official records, and reviewing video and telephone calls associated with investigations; and about assessing major/critical incidents that are or may be investigated by SIAB.
- Directing staff and/or responding to on-call incidents; administering training of SIAB staff; administering corrective counseling; and recommend discipline of staff.
- Communicating with County and municipal agencies as it relates to investigations. This includes coordinating with the State Attorney's Office and conferring with other government and law enforcement agencies that may also be investigating criminal charges against the subject or that may be interested in an investigation under your supervision.
- Following up on investigations involving inmate riots, death in custody, escapes, Prison Rape Elimination Act and/or Sexual Battery, and Uses of Force/Response to Resistances/excessive use of force, as well fraud complaints, staff involved in inappropriate relationship with inmates, and unlawful compensation regarding staff, inmates, or others within the community that connects to subject employees.

Furthermore, MDCR advises that your job duties include the responsibility to notify the SIAB Bureau Supervisor or designee of any conflict of interest regarding any investigation which you oversee, assign, or which may create a direct or indirect conflict of interest including notifying your supervisor of personal, direct, or indirect relationships with any subjects or witnesses associated with an assigned investigation.

You reside in the Majorca Isles Community Development District (MICDD) and have requested permission to engage in outside employment serving as an elected board member of the MICDD.

CDDs are independent special districts-not subject to the County Ethics Code. *See* INQ 11-58. They are created under Fla. Stat. 190.011, which conveys many powers to the CDDs that indicate their independence from the County. For example, CDDs can sue and be sued, acquire property, borrow money, issue bonds, and impose district ad valorem taxes. *Id.*

We have spoken to staff at Governmental Management Services (GMS), the company that manages the MICDD. Our understanding pursuant to conversations with GMS Staff is that the MICDD is located in Miami-Dade County Commission District 1. It is a 54-acre residential development lying wholly within the City of Miami Gardens. The MICDD has been in existence for over 6 years and has over 250,000 residents. The seats on the board are filled through a rotating general elections calendar. Records show that you were elected to the MICDD in 2016 and were reelected in 2020. Board members are paid \$200 per

meeting for their service on the MICDD board not to exceed \$4,800.00 per year¹ MICDD meetings generally occur once a month.

Issue

Whether the County Ethics Code prohibits your employment and service as an elected Board member of the MICDD.

Discussion and Opinion

Miami-Dade County Resign to Run Law

There is a threshold question regarding whether you, a County employee, may run and serve as an elected board member of a CDD. Miami-Dade County AO 7-2 provides that a County employee who qualifies as a candidate for election to any federal, state, or municipal office, must immediately take a leave of absence from his or her County position. If elected, the employee forfeits his or her County position. If not elected, the employee is eligible for immediate reinstatement of his or her former position. Section 1.05(c) of the Miami-Dade County Home Rule Amendment and Charter (County Resign to Run Law), as amended by Miami-Dade voters in November 2018, currently provides that a County employee who qualifies as a candidate for election to the **Office of Miami-Dade County Commissioner, Miami-Dade County Mayor, Miami-Dade County Clerk of the Circuit Court, or Miami-Dade County Property Appraiser** shall immediately take a leave of absence from his or her county position until the date of the election and shall, if elected, immediately forfeit his or her county position. If the candidate is not elected, he or she shall immediately be reinstated to his or her former position.

Given that it is insufficiently clear to the Commission on Ethics whether serving as a board member of your neighborhood CDD requires forfeiture of your County position under the current County Resign to Run Law and County Administrative orders, we strongly suggest that you address this matter with your Corrections supervisor, Corrections legal advisor, the County Attorney's Office, or the Mayor's Office. In addition, given that CDDs are independent special districts, created under State law, state law provisions not discussed in this opinion may apply to MICDD board members. For additional information on state law relevant to this issue, you may contact the Florida Ethics Commission at www.ethics.state.fl.us.

County Ethics Code

The secondary issue is whether a conflict of interest exists under the County Ethics Code where you, a County employee, serve as an elected board member of MICDD.

¹ §190.006(d)(8) Fla. Stat. (2020)

Section 2-11 of the Miami-Dade County Code requires that a fulltime County employee must obtain approval in writing from his/her department head before engaging in outside employment. In previous opinions, the Ethics Commission has generally defined outside employment as a non-County employment or business relationship in which the County employee provides services to the non-County employer that is compensated or customarily compensated. See RQO 15-01 and RQO 17-01. The COE's "Outside Employment Guidelines" memorandum (November 2019) provides examples of the types of activities that the Ethics Commission has generally found to constitute outside employment. The guidelines specifically state that, "compensated employment with any person, firm, corporation or entity (including a non-profit entity) is considered outside employment. (RQO 08-36, RQO 07-24, RQO 98-17 and INQ12-131, INQ 11-161)".

Based on the information that you have provided to us at this time, your compensated service as a member of the MICDD board constitutes outside employment. This requires the completion of the outside employment paperwork on a yearly basis. Our review found that you requested permission to engage in outside employment as an MICDD board member in late 2020. We note that you were previously employed in MDCR's training division and moved to a new position of SIAB Investigator supervisor. Upon review of your yearly outside employment by the SIAB division where you currently work, MDCR requested an ethics opinion in early 2021 regarding any possible ethics conflicts between your duties at MDCR and your compensated service on the MICDD.

Please note that the County Ethics Code at Section 2-11.1(j), prohibits a County employee from accepting outside employment that would impair his or her independence of judgment in the performance of his or her public duties. The intent of this ordinance is reflected in the County's Administrative Order No. 7-1, which states, in part, that, "[i]t is essential... that public employees avoid any and all situations that represent, or appear to represent, conflicts between their personal interests and their public duties.... Under no circumstance shall a County employee accept outside employment or render other than official services to a private interest ...where a real or apparent conflict of interest with one's official or public duties is possible." Consequently, AO 7-1 gives a County Department Director the discretion to deny outside employment if he or she finds that it is contrary to the interests of the County.

We have discussed this matter with MDCR Legal advisor Patricia Jones Cummins, who indicated that you and any SIAB investigators under your supervision, are not and would not be assigned to work the area where they live or where they serve in any elected position. Therefore, in this case, as you live and serve in an elected position in Mallorca Isles, you would not be assigned to work, nor should you supervise anyone that works, in the area covered by the MICDD. While it does not appear likely under the facts presented to the Commission on Ethics that your proposed outside employment would impair your independence of judgment in the performance of your public duties, you should be attentive to a possible conflict in the event that a matter with which you are involved in your County position may have a special impact on the MICDD or its members. See INQ 18-169.

Additionally, the following limitations under the Miami-Dade County Code at Section 2-11.1 will also apply:

- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls or any other communication and/or use of County resources, including but not limited to phones, copiers, computers, fax machines, and County vehicles, in connection with your outside employment, even after work. *See* § 2-11.1 (j) and (g), County Ethics Code; AO 5-5, AO 7-1; INQ 05-29 and INQ 15-240.
- You are prohibited from lobbying the County on behalf of MICDD and you may not appear before any County Board or agency and make a presentation on behalf of MICDD with respect to any contract, certificate, ruling, decision, opinion, application for grant funding, or other benefit sought by MICDD. *See* §2-11.1(s); §2-11.1(m)(1), County Ethics Code. Note, that this prohibition has been interpreted very broadly by the Ethics Commission as it relates to current County or municipal officers and employees. In RQO 12-10, the Ethics Commission stated that “individuals serving in County positions may not engage in any discussions whatsoever with officials, directors or staff of County government on behalf of third parties.” *See* RQO 12-10. Further, various opinions from the Ethics Commission have stated that a County employee may not engage in any interaction with County staff on behalf of third parties, even if the interaction is for a perfunctory meeting involving ministerial/clerical issues or information requests. *See* RQO 12-10; INQ 15-240. Therefore, in order to avoid the prohibition against appearances and presentation, you may not participate in any face-to-face meeting, or any discussion whatsoever, with County staff regarding MICDD *See* RQO 04-168; RQO 08-29; RQO 08-45; RQO 12-10.
- You are prohibited from using any confidential information acquired as a result of your County employment to derive a personal benefit. *See* Miami-Dade Code § 2-11.1(h).
- You may not exploit your County position to secure special privileges or exemptions for yourself or MICDD. *See* §2-11.1(g). We also recommend that, in order to avoid the appearance of impropriety, you refrain from any involvement regarding your office/department and MICDD. Although you may not appear before any County board or agency to seek any benefit on behalf of MICDD, it is also advisable, in your role as board member of MICDD, to recuse yourself from voting or participating in discussions and/or votes relating to County applications for funding, contracts, or any other MICDD initiatives involving the County.

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 and/or local laws or policies that may be applicable. Please contact the

Commission on Ethics for further guidance if the facts change. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

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.