



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jeanette Mc Kay-Wimbley, Facilities Equipment Technician, Miami-Dade Department of Transportation and Public Works

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

SUBJECT: INQ 2021-114

DATE: August 4, 2021

CC: All COE Legal Staff; Carlton Darling, Facilities Supervisor; Renessa Gordon, Facilities Maintenance Senior Manager, Miami-Dade Department of Transportation and Public Works

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 the Miami-Dade Department of Transportation and Public Works (DTPW) as a Facilities Equipment Technician. Your job duties at DTPW include inspection, maintenance, and repair of transportation facilities such as metro rail stations, bus maintenance facilities, etc.

You are also seeking permission to engage in outside employment through your privately owned company, Mc Kay Catering and Tax Preparation (Mc Kay C&T) which provides special event catering and tax preparation services to private parties. You stated that Mc Kay C&T is not seeking to become a County vendor; that this work would occur on weekends outside of your County hours; and that the work does not require any of the same tools, software, etc. that you use in your County job duties. We have consulted your supervisor at DTPW who confirmed that neither your current nor foreseeable County job duties involve catering services or providing tax, accounting, or financial services to DTPW or to the County.

Issue:

Whether any prohibited conflicts of interest may exist under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) between your County employment and your outside employment with your private company, Mc Kay C&T.

Discussion and opinion:

Outside employment is covered by the County Ethics Code, by Section 2-11 of the Miami-Dade County Code, Administrative Order 7-1, and other HR procedures. Section 2-11 of the Miami-Dade County Code prohibits County employees from accepting outside employment that is contrary, detrimental, or adverse to the interests of the County or any of its departments, and from using County time, equipment, or materials to perform the outside employment. Per Section 2-11 and relevant Administrative Orders and procedures, County employees engaged in outside employment must obtain approval by their department Director on a yearly basis.¹ County Administrative Order AO 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties. It states 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."

With respect to determining whether an employee's outside employment creates prohibited conflicts of interest, several sections of the Miami-Dade Code of Ethics must be considered.

- Sections 2-11.1(j) and (k) prohibit County employees from engaging in outside employment which creates a conflict between the County employee's public duties and his or her private interests and would therefore be likely to impair the County employee's independence of judgment in the performance of his or her official duties.
- 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

¹ It is within the discretion of County Department Directors to deny outside employment at any time if it is determined that the outside employment is or would be detrimental or adverse to the County or the employee's department. Approval or denial of outside employment may be based on many factors including conflicts of interest but also because of work performance issues, departmental staffing needs, and departmental policies.

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. See *e.g.*, INQ 15-59 and INQ 15-240.

In previous opinions and guidelines, the COE has determined that conflicting employment can occur when the outside employment is closely related to the employee's public duties and/or where the County employee deals with the same people or entities in both his/her outside employment and in his/her public position, *e.g.*, similar clients, suppliers, or subcontractors. See COE's Outside Employment Guidelines, August 2017, and RQO 15-03. In general, if an employee's outside employment is totally unrelated to his/her County employment, conflicts would generally not arise. See INQ 17-249 and 18-252.

After a review of all of the facts presented regarding your outside employment providing catering and tax preparation services to private individuals and companies within Miami-Dade County, we concur with your supervisor that this type of work is not likely to create prohibited conflicting employment.

This opinion is based on the following factors:

- Your work for DTPW involves technical maintenance of DTPW stations and maintenance buildings. Notably, it does not involve any food service, catering, tax preparation or any other financial services duties. Consequently, your job functions at DTPW and your work as a caterer and tax preparer for you company, Mc Kay C&T, are not closely related.
- You work for Mc Kay C&T is limited to municipal catering and tax preparation for private individuals and companies, and therefore you would be unlikely to deal with the same persons or entities in your outside employment that you deal with during your job functions at DTPW.
- Your work for Mc Kay C&T does not require the use of the same materials or resources that you employ in your County work and is performed outside of your County work hours.

While we find no prohibited conflicts of interest in this case, you must nevertheless abide by certain limitations. These include the prohibition from using County time or resources to promote, market, or operate your private business, from disclosing any confidential information, or using confidential information gained in your County employment for a private benefit; and from using your County position to secure any special benefits for yourself or your private business. Miami-Dade Code Section 2-11, AO No. 7-1, County Ethics Code Sections 2-11.1(g) and (h), and INQ 19-123.

Furthermore, as long as you are engaged in outside employment you must annually obtain permission to engage in outside employment and complete and file an outside employment financial disclosure form ([Outside Employment Statement](#)).Miami-Dade Code 2-11 and County Ethics Code Section 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. 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.