



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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TO: Lester Sola
Advisor to the County Mayor

FROM: José Arrojo, Executive Director
Martha D. Perez, General Counsel *MA*
Miami-Dade Commission on Ethics & Public Trust

SUBJECT: INQ 2021-118, Sec. 2-11.1(j) - Conflicting Employment Prohibited, Sections 2-453 and 2-456, Miami Beach Ethics Ordinance

DATE: August 26, 2021

CC: COE Staff

Thank you for consulting with the Miami-Dade County Commission on Ethics and Public Trust and for seeking our guidance regarding the application of the County and Miami Beach Ethics Codes to your prospective employment.

Facts:

You provided the following information to this office: You are currently a Miami-Dade County (“County”) employee and have served in senior County government positions for decades, most recently as the Director of the Aviation Department. It is your plan to transition from full-time County employment in the upcoming weeks to part-time Advisor to the County Mayor, effective September 1, 2021 until on or about July 2, 2022. Upon your continued employment with the County, you anticipate accepting a position as a full-time Assistant City Manager for the City of Miami Beach, Florida (“Beach”). It is your intent to begin your employment with the Beach on or about September 2021.

Your modified duties with the County as an Advisor to the Mayor will consist of providing historical information or advice regarding Aviation-related matters, at the Mayor’s request. ¹

¹ You have indicated that your proposed outside employment with the County has been designed with the intent that the work performed will constitute “creditable service in a regularly established position with a Florida Retirement Service (FRS) participating employer” and as such will count towards your retirement in the FRS. You are eligible to retire from the FRS on or about July 2, 2022. You will be compensated for your employment through a combination of approved

Your other duties as Assistant City Manager with the City of Miami Beach are being presently considered by the City Manager but will most likely not involve the same responsibilities in your County Advisor position.

The services provided to the Beach will occur outside of your part-time work schedule as an Advisor to the County Mayor, or would otherwise occur during approved leave from the County. Correspondingly, the services to be provided to the County on a part-time basis will occur outside of your full-time work schedule as Assistant City Manager and/or during approved leave from the City.

You have secured authorization from the County Mayor and Chief Operations Officer as well as the Miami Beach City Manager for this arrangement.

Issue:

Whether a prohibited conflict of interest exists between your County position as a part-time Advisor to the County Mayor and your prospective employment as Assistant City Manager for Miami Beach.²

Discussion:

Section 2-11.1(j) of the Miami-Dade County Ethics Code and Sections 2-453 and 2-456 of the City of Miami Beach Standards of Conduct Ordinance prohibit employees from engaging in outside (other) employment which would impair the employee's independence of judgment in the performance of his/her official duties.³

County Leave Manual's provisions or whether the employment service as described will count as creditable service under the FRS as defined in Florida Statutes are not matters over which the Ethics Commission has jurisdiction. Nothing in this letter should be read to imply that the Ethics Commission is opining on or interpreting those provisions.

² For purposes of this opinion, both governmental entities where Mr. Sola is (or will be) employed fall under the jurisdiction of the County Ethics Code. Accordingly, analysis of any potential conflict of interest is applicable to both entities and the traditional outside employment will be discussed as "other" employment.

³ Part-time employees of Miami-Dade County are subject to the Miami Dade County Conflict of Interest and Code of Ethics Ordinance. *See generally* RQO 04-48 (concluding that, exclusion of part-time employees would be contrary to the existing broad interpretation of the Ethics Code and would create an exemption for individuals who, for all intent and purposes, are working for local government and performing official public duties. Consequently, part-time employees are subject to Section 2-11.1 (j) *Conflicting employment prohibited.*)

All Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in other employment. *See* County's Administrative Order 7-1.⁴ Permission to engage in other employment is at the complete discretion of the employee's supervisor. *See* RQO 09-16, RQO 12-07 The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside/other employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In determining whether your prospective municipal employment is consistent with the limitations imposed by the ethics ordinance provisions, the Ethics Commission considers whether there is similarity or overlap in your duties as an Assistant City Manager for Miami Beach where you will be engaged with general oversight of municipal personnel and projects, and your duties as an Advisor to the County Mayor on Aviation Department matters. In this instance, because your engagement with the County is limited to Aviation Department issues, there does not appear to be any notable overlap in the position duties, and there is no indication that a prohibited conflict of interest exists in these dual roles. Specifically, in your City role, you are expected not to exercise any oversight, management, administration, or enforcement over County Aviation-related matters. *See generally* RQO 10-01, INQ 20-43, INQ 21-95

To be clear, the Ethics Code provides the *minimum standard* of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants. Avoiding an appearance of impropriety is even more important given that you will be engaged in a relatively unorthodox manner as an advisor to the County Mayor while simultaneously serving as senior member of a municipality's staff reporting to a Charter Officer.

As such, in abundance of caution, and to avoid an appearance of impropriety, you should recuse yourself from any involvement whatsoever in your official capacity as a Miami Beach Assistant City Manager in any matter that involves the County's Aviation Department or aviation-related matters generally. You should likewise recuse yourself from advising the Mayor on any matter that involves Miami Beach. INQ 14-154

Moreover, you must abide by certain limitations and cautions outlined below to avoid a conflict:

You may not use Beach time or resources in your employment with the County nor may you use County resources in your employment with Miami Beach. *See* Section 2- 11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.

You shall not engage in activities that relate in any way to your County employment during your Beach work hours, **and vice-versa**. These include, phone calls, or any other communication, nor may you use any County resources, including but not limited to phones, copiers, computers, fax machines, computer

⁴ Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

programs, computer licenses purchased by the County, or vehicles, in connection with your Beach employment, even after work, **and vice-versa**. Additionally, you may not be involved in the oversight of any Beach project that you were involved with as Director of MDAD or that you will be involved with as Advisor. *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05- 29, and INQ 15-240.

You are prohibited from disclosing or using any confidential or proprietary information acquired as a result of your County employment to derive a personal benefit, or a benefit for the City, or its constituents or service recipients, **and vice-versa**. *See* Section 2-11.1(h), Miami-Dade County Ethics Code; RQO 99-40

You may not exploit your County or municipal position to secure special privileges or exemptions for yourself, the governmental entities or their constituents or service recipients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

You may not represent the Beach before any County board or agency and **vice versa**. Moreover, since you are being compensated by the Beach for your services as an Assistant City Manager, you may not be engaged in any matter where the Beach is seeking a particular benefit from the County or a County agency. The same applies regarding your involvement in any matter where the County is seeking a benefit from the Beach or a Beach agency. *See* Section 2-11.1(m)(1), Miami Dade County Ethics Code.⁶

Finally, because your employment with the City of Miami Beach will be on a full-time basis, you are required to file an Outside Employment Income Statement regarding your County employment with the Miami Beach Municipal Clerk by July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code. You should consult with the Beach's Human Resources Department regarding request and approval of outside employment.⁷

Opinion:

Consequently, based on the facts you have presented and after discussing this matter with County and Miami Beach officials, it is not likely that a prohibited conflict of interest would exist between

⁶ There is a myriad of issues where Miami-Dade County and Miami Beach may overlap. Issues relating to bridges, mass transit, resiliency, street closures and environment are just a few that are readily apparent. While your work with the County is described as limited to Aviation Department matters, in order to avoid an appearance of impropriety and to ensure that you do not run afoul of the Ethics Code's prohibitions, you should recuse yourself for the next ten months from engagement in any transaction or project where Miami-Dade County and the City of Miami Beach may have opposing positions.

⁷ Keep in mind, directives from Miami Beach may have limitations beyond those established by the County Ethics Code.

your public duties as a part-time Advisor to the County Mayor on Aviation-related matters and your public duties as Miami Beach Assistant City Manager.

We recommend that, prior to your involvement in any matters which may affect both governmental entities, you should seek guidance from this office.⁸

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 the Florida Constitution, state statutes, or County and municipal human resources policies. Questions regarding the dual office-holding provision should be addressed to the Florida Attorney General, and those relating to the State Ethics Code should be addressed to the Florida Commission on Ethics and Public Trust.

Thank you again for consulting with the Miami-Dade County Commission on Ethics and Public Trust and do not hesitate to contact us should you require additional assistance.

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.

⁸ Other provisions of the County Ethics Code, including but not limited to Sections 2-11.1(h) and 2-11.1(q), may be implicated upon your separation from County employment in July 2022 and your continued employment with the City of Miami Beach.