


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jason Smith, Equity and Inclusion Officer
Mayor's Office

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2021-119, Conflicts of Interest regarding the Mayor's Equity and Inclusion Officer as MDEAT Board Member, §§ 2-11.1(g) and (j), County Ethics Code

DATE: August 25, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking guidance regarding the application of the County Ethics Code to your possible dual service as the Mayor's Equity and Inclusion Officer and as a board member of the Miami-Dade Economic Advocacy Trust (MDEAT).

Issue:

Whether the County Ethics Code prohibits the Mayor's Equity and Inclusion Officer from concurrently serving as an appointed member of MDEAT.

Facts:

You are employed as the County Mayor's Equity and Inclusion Officer. In this capacity, you are tasked with expanding opportunities for small businesses. As part of this charge, in relation to obtaining County contracts, you endeavor to make the process more "user friendly" for small businesses. You have also been asked to work on revisions to the current small business enterprise model used in the award of County contracts so as to return to one that also includes specific "set-asides" for minority owned small businesses.

In addition to your small business assignment, you have also been asked to work on expanding housing opportunities for at risk residents. Consequently, in the short term, you will be involved

in trying to limit or prevent evictions and in the longer term, ensuring and expanding housing availability for all of the County's residents.

Finally, you will also be engaged in developing equity inclusion courses for County employees.

You may be appointed to serve on the MDEAT board. MDEAT is a county board and agency created by ordinance. *See generally* Sec. 2-501, Miami-Dade Code. Its stated mission is to ensure the equitable participation of Blacks in Miami-Dade County's economic growth through advocacy and monitoring of economic conditions and economic development and housing initiatives in Miami-Dade County.

Two MDEAT programs are relevant as regards your possible dual roles as a member of the MDEAT board and Mayoral employee tasked with small business and housing matters. One of MDEAT's core functions is the support of small businesses. Indeed, MDEAT publicly highlights its historic support of small businesses in the form of grants within the County's designated Targeted Urban Areas (TUAs). Grant recipients are able to use the funds for working capital, payroll, supplies and equipment, and other essential business needs.

Also, MDEAT manages the Homeownership Assistance Program (HAP) which is designed to increase the number of first-time home purchases for low-to-moderate income County residents by providing zero-interest deferred loan provides funding for first-time homebuyers towards down payment and closing costs, making it easier to get approved for a mortgage.

Discussion:

The Ethics Commission has generally cautioned against the practice of County board service by County employees because several provisions of the Ethics Code are implicated with such service. When a County employee is being contemplated for appointment to a County Board, the Ethics Commission has recommended that it be consulted for an ethics opinion prior to appointment. *See* INQ 16-03.

Exploitation of Official Position

Section 2-11.1(g) of the County Ethics Code prohibits board members from using their official position to secure special privileges or exemptions for themselves *or others*.

As discussed above, the functions of Mayor's Equity and Inclusion Officer as regards small business and housing expansion and those of MDEAT are closely connected in several respects, and as such, policy and funding recommendations made by the MDEAT board may impact your Mayoral job functions.

Exploitation of official position could occur where your concurrent service as a MDEAT board member and member of the Mayor's staff would create conflicts of interest between your duty to the board and benefits deriving to you as a result of the impact of MDEAT board policy or funding recommendations on housing and small business operations.

Stated another way, as an MDEAT board member you would be tasked with providing advice and guidance to the Mayor on small business and housing initiatives and funding while simultaneously

supervising the same types of initiatives for the Mayor. You would be on both sides of the transaction. *See generally* INQ 16-03 and INQ 2021-51.¹

Conflicting Employment

Section 2-11.1(j) prohibits County board members from engaging in employment outside of board responsibilities that would impair the board member's independence of judgment in the performance of his or her public duties to the County.

The COE has previously identified several factors that are indicative of potential conflicts between a County board member's duties and his or her other employment. These include but are not limited to:

- Employment that is related to the board member's public position; and
- Employment that consists of work that is similar to work performed by the board on which the board member serves; and
- Employment that is likely to place the board member in situations in which economic considerations may override the faithful discharge of his/her responsibilities to the board; and
- Employment that would require engagement with any issue that could foreseeably be addressed by the member's board.

Consequently, because of the overlap in your duties as a Mayoral officer tasked with small business and housing matters and the mission of the MDEAT board in these same areas, dual service could constitute conflicting employment. *See* INQ 14-36 and INQ 15-189.²

¹ INQ 16-03 (Ethics Commission cautioned against the practice of County board service by County employees because several provisions of the Ethics Code are implicated with such service. When a County employee is being contemplated for appointment to a County Board, the Ethics Commission has recommended that it be consulted for an ethics opinion); INQ 2021-51 (Exploitation of official position could occur where a CASHD employee's concurrent service as a DVOB board member would create conflicts of interest between the employee's duty to the board and benefits deriving to him or her as a result of the impact of DVOB decisions on CAHSD's budget and operations.)

² INQ 14-36 (Ethics Commission Determined that County advisory board member would be prohibited by Section 2-11.1(j) of the County Ethics Code from engaging in employment, which would impair his independence of judgment in the performance of his public duties); INQ 15-189 (Ethics Commission opined that a Juvenile Services Department (JSD) employee should not serve as a member of the Miami-Dade Economic Advocacy Trust (MDEAT) because, as an MDEAT member, the employee would have to make funding recommendations regarding MDEAT programs that receive referrals from JSD. As such, MDEAT funding and program recommendations might impact the JSD employee's position within that department)

Opinion:

Based on the facts presented and discussed above, it would appear that the contemplated dual service as the Mayor's Equity and Inclusion Officer, tasked with increasing small business and housing opportunities, and as an MDEAT board member, where MDEAT is also engaged in the same initiatives and is tasked with advising the Mayor on these matters, would likely create prohibited conflicts of interest under the County ethics Code, and therefore we advise that you should not accept service on the MDEAT board.

The Ethics Code provides a minimum standard of conduct for public officials. Additionally, the Ethics Commission's Rules of Procedure provide that it may in its advisory role opine on whether a particular conduct may create an "appearance of impropriety." It appears that at a minimum, the proposed arrangement creates such an appearance of impropriety.

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 Ethics Commission Advocate for consideration of an ethics enforcement action.