



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Honorable Kionne McGhee  
County Commissioner for District 9

**FROM:** Jose J. Arrojo   
Executive Director

**SUBJECT:** INQ 2021-66, Sections 2-11.1 (j), (g), and (e) of the County Ethics Code relating to Private Employment, Exploitation of Position and Charitable Gift Solicitation

**DATE:** April 13, 2021

**CC:** COE Legal Staff

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Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to your prospective employment with Children of Inmates.

Facts:

You are the County Commissioner for District 9. You are an attorney by training and are considering accepting a position as Chief of External Affairs with Children of Inmates (“COI”). COI is a nonprofit entity that has been approved by the Internal Revenue Service as a tax-exempt, charitable organization. COI is dedicated to fostering, maintaining, and supporting relationships between children and their incarcerated parents.

COI is primarily funded by The Children’s Trust (“TCT”) and the State of Florida. It does receive some funds from the U.S. Department of Justice, through Miami-Dade County and Palm Beach Counties. TCT funding resolutions voted upon by the TCT Board of Directors are not reviewed or approved by the Board of County Commissioners.<sup>1</sup>

In your role as the Chief of External Affairs, it is contemplated that you will be principally engaged in outreach to private foundations, seeking to build partnerships with those entities. Your outreach will involve solicitations of financial and programmatic support for COI’s mission.

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<sup>1</sup> As confirmed by TCT executive staff.

You will not be engaged in any outreach or solicitation activities in Miami-Dade County.

Issue:

Whether Commissioner McGhee's employment as Chief of External Affairs with a nonprofit entity, where he will be engaged in grant and donation solicitation activities outside of Miami-Dade County, constitutes conflicting employment that would impair his independence of judgment in the performance of his public duties.

Discussion and Opinion:

Section 2-11.1(j), of the County Ethics Code, prohibits a County Commissioner from accepting private employment that would impair his or her independence of judgment in the performance of his or her public duties. That section provides as follows:

(j) Conflicting employment prohibited. No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall accept other employment which would impair his or her independence of judgement in the performance of his or her official duties. [Commissioners are included in subsection (b)(1)]<sup>2</sup>

Your proposed position as Chief of External Affairs for COI is considered outside or private employment. *See generally* RQO 17-03.

There are several factors considered in determining whether a potential conflict of interest exists regarding private employment.<sup>3</sup> Factors considered in the analysis regarding potential conflicting outside employment include: the nexus between the public duties and the private employment; whether the private work is conducted outside of areas over which the official has decision-making jurisdiction; and that the official does not use his or her position to solicit business or customers.

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<sup>2</sup> *See generally* County Administrative Order No. 7-1, as a statement of County policy regarding private employment, provides in relevant part, that: "It is essential...that public employees avoid any and all situations that represent, or appear to represent, conflicts between their personal interests and public duties...Under no circumstances shall a County employee accept outside employment or render other than official services to a private interest where County time, equipment or material is used, or where a real or apparent conflict of interest with one's official or public duties is possible."

<sup>3</sup> *See generally* COE "Outside Employment Guidelines" Memorandum (September 2014) which provides examples of potential conflicts between an official's/employee's public duties and his or her duties with an outside employer.

In this instance, from the job description provided, there will not be any notable overlap in the position duties, and you will not be engaging in solicitation activities in Miami-Dade County. As such, there does not appear to be an indication that a prohibited conflict of interest exists. *See generally* INQ 17-58.

Notwithstanding a public official's ability to conduct his or her private business, Section 2-11.1(g) of the County Ethics Code prohibits a Commissioner from using or attempting to use his or her official position to secure special privileges or exemptions for himself, herself, or others (except as may be specifically permitted by ordinance or resolution). That section provides as follows:

(g) Exploitation of official position prohibited. No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Accordingly, as regards your permissible private employment, you must comply with the following prohibitions:

- You may not use County resources in your private employment (including but not limited to County staff, phones, copiers, computers, fax machines, County computer programs, computer licenses purchased by the County, or County vehicles, in connection with your private employment). *See* AO 5-5, AO 7-1; INQ 05- 29; INQ 15-240; INQ 19-123; and INQ 20-43.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County position to derive a personal benefit, or a benefit for COI, its clients or service recipients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself, COI, or its clients or service recipients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code. <sup>4</sup>

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<sup>4</sup> While COI does not receive any direct funding from Miami-Dade County, it does offer services to inmates in Miami-Dade County Corrections facilities, and their children and families. The Commission on Ethics has opined that a County Commissioner's employment with a nonprofit that receives funding from the County as a community-based organization (CBO) created a voting conflict of interest under subsection (d) of the Ethics Code for the voting member on matters before the BCC which directly or indirectly affected the CBO. This is primarily because as a paid employee of the CBO, it was deemed that the member might profit or be enhanced by action of the BCC affecting the CBO. (*See* INQ 18-126; INQ 17-235) In the future, if any matter should come before the Board of County Commissioners that might affect COI, you are encouraged to seek a voting conflict opinion.

- You may not represent COI before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173.

The County Ethics Code at Section 2-11.1 (e)(3) generally prohibits the solicitation or demand of a gifts by local employees and elected officials.

Section 2-11.1 (e)(3) Prohibitions. A person described in subsection (b)(1) [Mayors and Commissioners] through (6) shall neither solicit nor demand any gift.

Also, because of the nature the proposed private employment, it is appropriate to comment on the general gift solicitation ban, and the exceptions contained in subsections 2-11.1 (e)(2)(f) and (2)(g) which allow the solicitation of gifts by commissioners in the performance of their official duties for use solely by their government entity in conducting official business.<sup>5</sup>

Accordingly, the Ethics Commission has recognized that private donations and funds can be properly relied upon to support or promote government-sponsored community programs and charitable causes which clearly serve a public purpose. Clearly, fostering, maintaining, and supporting relationships between children and their incarcerated parents qualifies as a legitimate charitable cause or laudable public purpose.

However, the Ethics Commission recommends that local governments should adopt safeguards to avoid appearances of impropriety and to ensure that solicitation, acceptance, and use of private funds are governed with the highest standard of ethics, transparency, disclosure and accountability in these solicitation and funding processes. *See generally* RQO 02-70; INQ 13-70; INQ 19-124.

While these opinions regarding solicitation of charitable donations in your official function are not directly on point, the policy underlying these opinions should likewise guide your solicitation activities in your employment as Chief of External Affairs for COI. You should exercise caution and not engage in direct solicitation of current or future County vendors and contractors, while recognizing that these parties can be part of a larger solicitation that includes members of the general community. *See* RQO 06-05.

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

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<sup>5</sup> Because businesses or persons that are solicited may feel compelled to donate because of the official's position, the soliciting official should be careful to avoid any appearance that he or she is: using or attempting to use his or her official position to secure special benefits for others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted by the Board of County Commissioners. *See* Section 2-11.1(g) of the County Ethics Code.

laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.<sup>6</sup>

We hope this opinion is of assistance and we remain available to discuss any matters addressed herein. Also, 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.

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<sup>6</sup> Should COI ever become a contractor or vendor directly for Miami-Dade County: *See* Florida State Commission on Ethics, COE 14-02 (The State Ethics Code at Sec. 112.313(7)(a), Florida Statutes, prohibits a commissioner from having an employment relationship with a business entity doing business with his government agency); and CEO 19-10 (The State Ethics Code at 112.313(7)(a), Florida Statutes, prohibits a commissioner from having an employment relationship with a nonprofit if it does business with the County by virtue of grants and contracts formed between the County and the nonprofit).