


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Michael Liu, Director
Public Housing & Community Development Department

FROM: Jose J. Arrojo
Executive Director 
Martha D. Perez
General Counsel

SUBJECT: INQ 2021-70, Section 2-11.1 (j), Conflicting Employment Prohibited; Section 2-11.1(m), Appearances Prohibited; Section 2-11.1(g), Exploitation of Official Position; and Section 2-11.1 (e), Gifts

DATE: April 22, 2021

CC: COE Legal Staff

Thank you contacting the Miami Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of Section 2-11.1, of the Code of Miami Dade County, (“Ethics Code”) to your prospective service as Director for Rebuilding Together (RT).

Facts:

You are the Director of the Miami-Dade Public Housing & Community Development Department. As the head of that department, you are tasked with the administration of housing incentives and initiatives for more than 30,000 low- and moderate-income residents. You also oversee the Section 8 program and other specialized housing opportunities. You would like to serve in an unpaid and voluntary position as a Director for RT. Your engagement with RT would occur outside of your County work hours and would be performed using your personal and RT resources to reimburse out of pocket expenses.

RT self-describes as a professional association with a mission of repairing homes, revitalizing at-risk communities, and supporting persons in need. It is a nonprofit organization as defined under Section 501(c)(3) of the Internal Revenue Code. Its headquarters and base of operations is

in Washington, D.C. and it has affiliates throughout the Country.¹ It supports its activities primarily through a combination of grants and donations.

RT is not a County vendor or contractor, nor is it a grant applicant, *at this time*.

Issues:

Whether your prospective service as a Director for Rebuilding Together is permissible under Section 2-11.1 (j) of the County Ethics Code relating to conflicting outside employment.

Discussion and Opinion:

Serving as a Director of a nonprofit on a compensated or uncompensated basis, if you are involved in aspects relating to the administration of that entity, may constitute outside employment. (*See generally* RQO 17-03) Section 2-11.1(j) of the County Ethics Code prohibits County employees from engaging in outside employment that creates a conflict of interest between their public duties and their personal interests. (*See also* Miami-Dade Administrative Order 7-1)

Due to the public and prominent nature of your position as the County's Public Housing Director, this ethics guidance will treat your engagement with RT as if you may be involved in some respects relating to the administration of that agency in your capacity as a Director.

In this instance, your uncompensated and voluntary engagement as a Director with RT, even if you were to engage in some aspect of the administration of the organization, does not constitute prohibited conflicting employment because of the charitable nature of the nonprofit that is funded primarily through grants and donations. RT's base of operations is outside of Miami-Dade County and you have advised that your service to RT will occur outside of your County hours and would be performed using your personal and RT resources. (*See* INQ 19-60)

Nevertheless, in order to avoid conflicts of interest, you must abide by the following course of conduct as it relates to your service to RT, particularly because of the nature of your position as the County's Public Housing Director.

While your prospective service with RT does not constitute prohibited conflicting employment, and you would be engaged with the national organization, not the local affiliate, we recommend that in order to avoid the appearance of impropriety, should part of your service require you directly or indirectly solicit grants, donations, or services on behalf of RT, that you decline to

¹ Rebuilding Together Miami-Dade, Inc. (RTMD) is RT's local affiliate. RTMD is a registered Florida not-for-profit corporation and it is likewise dedicated to providing home repair and modification services to the community's vulnerable homeowners.

engage in those activities in Miami-Dade County, or alternatively, that you seek further ethics guidance at that time.² (See INQ 14-170)

For example, you are prohibited from appearing before any County department, agency, or board to seek a grant or other funding source on behalf of RT. This includes negotiating terms on behalf of RT, signing applications or funding agreements or receiving compensation from RT from money awarded by the County. (See Sections 2-11.1(m) and 2-11.1(g), County Ethics Code; INQs 10-201, 11-01, 12-13, 14-170, 16-22, 16-48 and 18-100)

However, if RT decides to apply for a grant funding from the County, without your involvement, and the receipt of the grant is conditioned on a grantor/grantee contract, then this may be permissible provided that the contract does not interfere with the full and faithful discharge of your duties to the County and that neither you nor your Department is involved in the grant award, its supervision or compliance monitoring. This situation would require you to obtain an ethics opinion. (See Sections 2-11.1(c)(2) and (d), County Ethics Code; INQ 18-100; and INQ 2021-25)

With respect to fundraising on behalf of RT, the County Ethics Code prohibits County employees from soliciting any gifts in exchange for an official action. (See Section 2-11.1(e)(3), County Ethics Code) This obviously means that you could not solicit or accept a gift on behalf of RT in exchange for any official action you take as a County employee.

However, outside of a prohibited *quid pro quo* scenario, solicitation of gifts on behalf of a non-profit organization is not generally prohibited, particularly where an employee is not compensated by the 501(c)(3) entity. (See generally INQ 16-93)

You should nevertheless avoid direct, targeted solicitations of County vendors and lobbyists on behalf of RT, even if the solicitation is not prohibited, in order to avoid situations where a County vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. (See INQ 16-275) Furthermore, any participation in fundraising activities on behalf of RT must be in your personal name without title or connection to your official position. In other words, any solicitation must be conducted in your capacity as RT Director, not Miami-Dade County's Public Housing Director. (See RQO 10-08; INQ 14-168)

Again, our best guidance, because of the nature of your position as the County's Public Housing Director, is that you limit any fundraising or grant solicitation activities to outside of Miami-Dade County or that you seek further ethics guidance, at that time. (See INQ 14-168)

Finally, all of the standard prohibitions that apply to County employees engaged in outside employment would apply to your service with RT as a Director:

² Also, you should not attempt to influence any official decision by the County to benefit RT or the local RTMD in any way.

You may not use County time or resources in your outside employment. (*See* Section 2- 11.1 (g), County Ethics Code; INQ 19-123; INQ 20-43)

You may not engage in activities that relate in any way to your outside employment during your County work hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County computer programs, computer licenses purchased by the County, County vehicles, in connection with your outside employment, even after work). (*See* Sections 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 disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, or a benefit for RT, its clients or service recipients. (*See* Section 2-11.1(h), County Ethics Code; INQ 14-168)

As stated herein, you may not exploit your County position to secure special privileges or exemptions for yourself, RT, or its clients or service recipients. (*See* Section 2-11.1(g), County Ethics Code)

As stated herein, you may not represent RT before any County board or agency. (*See* Section 2-11.1(m)(1), County Ethics Code; RQO 04-173)

Finally, as long as you are engaged in outside employment you must obtain permission from your assigned Mayor's Office, Chief Administrator. (Section 2-11.1 (k), County Ethics Code)

You have a continuing duty to obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. (*See* Section 2-11.1(k)(2), County Ethics Code) You should access the County's electronic and automated Outside Employment authorization system at this time.

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 ethics laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics and Public Trust.

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.