


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Morris Copeland
Chief Community Services Officer
Mayor's Office

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2021-89, Section 2-11.1 (j), Conflicting Employment Prohibited

DATE: June 2, 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 the County Ethics Code to your service as a member of the Executive Board for the Urban League of Greater Miami (ULGM).

Facts:

You are the County Mayor's Chief Community Services Officer. You oversee several County Departments in your administrative portfolio including the Public Housing and Community Development Department (PHCD). The PHCD Director reports directly to you.

The Urban League Miami of Greater Miami, Inc. is a Florida not-for-profit corporation. ULGM self describes as a community agency that provides services related to employment, childcare, senior citizen services, housing, economic development, training, and education. One of its functions is the provision of affordable housing for low-income and moderate-income people.

You have been engaged with the ULGM for many years, as its community services and programs relate directly to your professional pursuits involving less-advantaged and at-risk individuals and communities in Miami-Dade County.

You are a volunteer member of the ULGM's Board. You do not draw a salary from the ULGM. You do not engage in grant or charitable solicitation activities on behalf of the ULGM and likewise do not lobby for the entity. You are not engaged in an administrative capacity, supervising the day-to-day activities of the ULGM. Also, your activities relating to ULGM take place outside of your County work hours and do not involve County staff or resources.

The County Mayor is aware of your work with the ULGM and has approved of your continuing to volunteer with the entity as long as the service is consistent with the requirements imposed on County officials and employees under the County Ethics Code.

The ULGM is a member of New Urban League Development, LLC (NUD). NUD self-describes as the real estate development arm of the ULGM and it is engaged in real estate development. It reports that through its partnerships with other entities, it has delivered over 1,300 affordable housing units in over a dozen housing projects. ULGM is also a member of other LLCs that own and operate housing sites in Miami-Dade. (collectively the “LLCs”)

As a member of NUD and other LLCs, the ULGM has some managerial rights and receives profits from the LLCs. These profits, in turn, are used to operate the ULGM and fund its various community services.

The members of the ULGM’s Board consider and vote on matters related to the LLCs, including acquisitions and sales of property.

Some of the LLCs are County contractors and the PHCD is on the other side of transactions with the LLCs. The transactions that the LLCs engage in with PHCD require the LLCs to satisfy terms set by the Department, including but not limited to, numbers and types of housing units and whether these qualify as affordable or workforce housing. PHCD has compliance or monitoring authority over these contracts.

In your capacity as the Mayor’s Chief Community Services Officer, you may be called upon to sign-off on or approve agreements between the LLCs and the County through its PHCD or reports regarding LLC compliance.

Issue:

Whether your service as a member of the Urban League of Greater Miami’s (ULGM) Executive Board, when the ULGM is a member of for-profit LLCs that contract with the County through the Public Housing and Community Development Department, is permissible under Section 2-11.1 (j) of the County Ethics Code relating to conflicting outside employment.

Discussion and Opinion:

Serving as a member of the Board of Directors 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 the public duties and his or her personal interests. (*See also* Miami-Dade Administrative Order 7-1)

In abundance of caution, because of the public and prominent nature of your position as the Mayor’s Chief Community Services Officer, this ethics guidance will treat your engagement with the ULGM as if you may be involved in some respects relating to the administration of that agency in your capacity as a member of the Board. (*See* INQ 2021-70)

In this instance, your uncompensated and voluntary engagement as a member of the Board of the ULGM, does not constitute prohibited conflicting employment because of the absence of any administrative duties; the charitable nature of the nonprofit; and because your service will occur outside of your County hours and would be performed using your personal and ULGM resources. (See generally INQ 19-60)

As regards ULGM, should it decide to directly apply for a grant from the County and the receipt of the grant is conditioned on a grantor/grantee contract, then this would 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 any of the Departments in your portfolio are involved in the grant application, award, supervision, compliance or enforcement. (See Sections 2-11.1(c)(2) and (d), Miami-Dade County; INQ 2021-25; INQ 2021-70)

Even if the grant application, award, or administration occurred without the involvement of any of your departments, you could not be involved in any manner with this process. Please be advised that the County Ethics Commission has interpreted this prohibition very expansively to include any communications, in any form, intended to influence an individual within the County to take an official action. (See INQ 16-48, 16-22, INQ 14-170, INQ 12-13, INQ 11-01, and INQ 10-201)

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

The Ethics Commission's best guidance, because of the nature of your position as the County's Community Services Chief, is that should you decide to engage in fundraising or charitable solicitation activities on behalf of the ULGM, that you seek further ethics guidance, at that time.

All of the standard prohibitions that apply to County employees engaged in outside employment would apply to your service with ULGM:

You may not use County time or resources in your outside employment. See Section 2- 11.1 (g), Miami-Dade 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), Miami-Dade 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 ULGM or its clients and 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, ULGM or its clients and service recipients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

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

Finally, as long as you are engaged in outside employment you must obtain permission from the Mayor or her Chief Administrator. (Section 2-11.1 (k), County Ethics Code)

In the event your service as a member of the Board requires you to exercise administrative duties and/or is compensated, 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), Miami-Dade County Ethics Code. You should access the County's electronic and automated Outside Employment authorization system at this time.

Finally, Section 2-11.1(u) of the Code of Ethics, prohibits a person who is serving on the staff of an elected county official, from entering into a business transaction with entities, like the LLCs, that have a contract with Miami-Dade County.

Moreover, the County's Conflict of Interest and Code of Ethics 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 are designated executive "departmental personnel" pursuant to Section 2-11.1(b)(5) of the County Ethics Code, and a member of the Mayor's staff.

Therefore, because the ULGM funds its operations with for-profit LLCs that contract with Miami-Dade County through the PHCD department over which you have executive oversight, then you should abide by the following course of conduct as relates to the LLCs:

You should not be involved in your capacity as the Chief Community Services Officer, directly or indirectly, *in any matter* relating to an LLC that has the ULGM as a member.

It is recommended that you not be involved in your capacity as member of the Executive Board of the ULGM, directly or indirectly, in any matter relating to an LLC that has the ULGM as a member.

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 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.