



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Miguel Lopez, Fire Plans Processor, Miami-Dade County Fire Rescue Department

FROM: Gilma Diaz-Greco, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-95

DATE: 6-23-21

CC: COE Legal Staff; Alan Cominsky, Fire Chief; and Melanie Adams, Division Chief, Fire Prevention Division, Miami-Dade Fire Rescue Department; Lorena Bravo, City Attorney, City of Hialeah

The Miami-Dade County Department that employs you has contacted the Miami-Dade Commission on Ethics and Public Trust and has requested our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts:

You are employed at the Miami-Dade Fire Rescue Department (MDFR) as a Fire Plans Processor in the Department's Fire Prevention Division. Your County job duties include reviewing sprinkler plans as part of the County's fire prevention building permitting process administered by MDFR to ensure compliance with the Miami-Dade County Fire Prevention Code¹. The State Fire Code designates to local governments the fire permitting

¹ Miami-Dade Code Chapter 14 adopts The State of Florida Fire Code at Chapter 633, Florida Statutes as amended by the State periodically.

function provided that the local governments follow the minimum standards set out in the state statute, local governments may set stricter standards.²

Miami-Dade County develops, constructs, and administers County-wide public work projects such as transportation hubs, hospital facilities, and water treatment facilities among others. The facilities may be County-wide or may be located both in unincorporated Miami-Dade County as well as within Municipal boundaries. These projects generally require fire permits. Although permitting within a municipality would normally be performed by the municipality, it is our understanding that for County projects built within municipal boundaries, the practice by the County is to enter into inter-local agreements between the County and municipality stipulating that these County projects will be permitted by the County rather than the municipality.

This inquiry focuses on your outside employment as a part time- employee at the City of Hialeah Fire Department as a Fire Plans Processor. You had been granted permission to engage in this outside employment by MDFR before, but no ethics opinion regarding this matter was requested previously by MDFR. Your job duties at the City of Hialeah Fire Permitting Department include reviewing sprinkler plans as part of the City's fire prevention building permitting process administered to ensure compliance with the City and State Fire Code (as adopted by Miami-Dade County). You advise that during the time that you have been employed at the City, no plan review has been submitted to the City of Hialeah Fire Permitting Department for County projects within the City's boundaries. In addition, your outside employment would occur outside of your County hours of employment and the City of Hialeah would provide you with the resources necessary to perform your City job duties.

We have consulted with your supervisors at MDFR and at the City of Hialeah regarding your job duties with the respective departments. The supervisors have advised that, given that the existing practice of permitting County projects within Municipal boundaries is at the County level and not at the municipal level, that it is unlikely there will be any

² See Fla. Stat. §633.118. The Miami-Dade fire ordinance adopts the State fire code, provides for additional requirements, and specifies that for projects within unincorporated Miami-Dade, the County will administer and issue fire permits; fire permits for projects within municipal boundaries in municipalities that have a fire department, are administered, and permitted by the municipality. Miami-Dade Code §14-39

overlap or relationship between the work and the job duties that you perform at MDR's Fire Permitting Division.

Issue:

Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a Fire Plans Processor for the City of Hialeah.

Analysis and Opinion

Several sections of the Miami-Dade Code of Ethics must be considered in analyzing whether a County employee's outside employment may create prohibited conflicts of interest.

- Sections 2-11.1(j) and (k) prohibit County employees from engaging in outside employment which creates a conflict between the County employee's public duties and his or her private interests and would therefore be likely to impair the County employee's independence of judgment in the performance of his or her official duties. Furthermore, County employees may not engage in outside employment that creates a conflict of interest between the employee's public duties and his or her personal interests. Miami-Dade Administrative Order 7-1.
- Section (g) of the County Ethics Code prohibits County employees from using their official position to obtain special privileges or exemptions for themselves or others, and/or the use of County time or resources in the performance of outside employment, may constitute an "exploitation of official position" in violation of Section 2-11.1(g) of the County Ethics Code.

In previous opinions and guidelines, the COE has determined that conflicting employment may occur when the outside employment is related to the employee's public duties. *See* COE's Outside Employment Guidelines, August 2019. However, outside employment that shares some of the knowledge base used in your County work, but does not involve overlap of duties or involve administration or oversight of County personnel projects or processes would not generally create a conflicting employment. *See generally* RQO 10-01 and INQ 20-43.

In this instance, your outside employment working as a fire sprinkler Plans Processor for the City of Hialeah shares some of the knowledge base that you have acquired because of your work for the County as a fire plans processor. However, conflicts are unlikely to exist between your County duties and your outside employment because permitting of County

projects within Municipal boundary is generally done by the County and not by the municipality, and the City does not submit plans for review to MDRF. Therefore, interaction with the same personnel you interact with in your County duties is unlikely. Furthermore, your outside employment would occur outside of your County hours and would be performed using City of Hialeah resources. Consequently, based on the facts you have presented and after discussing this matter with your MDRF supervisor, we concur with her that it is not likely that a prohibited conflict of interest would exist between your public MDRF duties and your outside employment. *See* Outside Employment Guidelines (2019), RQO 10-01 and INQ 20-43.

Nevertheless, you must abide by certain limitations and cautions outlined below:

- You may not use County time or resources in your outside employment. Miami-Dade Code Section 2-11. Furthermore, use of County time or resources in the performance of your outside employment may constitute an “exploitation of official position” in violation of Section 2-11.1(g) of the County Ethics Code.
- You may not disclose any confidential information, or use any confidential information gained in your County employment to benefit yourself, or your outside employer. Miami-Dade Code §2-11.1(h).
- You may not represent the City of Hialeah or any of its residents before any County board or agency. Miami-Dade Code 2-11.1(m)(1) and RQO 04-173.

Lastly, we have advised your County and City supervisors that in the event that a plan review were to be submitted to you which would present a conflict, that the review must be designated to someone else within the relevant department that is not under your supervision. Through this memorandum we also recommend to MDRF that it should review your outside employment closely to ensure that no conflicts develop in the future.

Please also note that, as long as you are engaged in outside employment, you must obtain yearly permission to engage in outside employment in order for MDRF to review any changes in your role with the Hialeah fire department. You must also file an outside employment financial disclosure form ([Employment Statement](#)) reporting any money received from your employment with the City of Hialeah. This form must include any money earned and must be completed even if the business is not profitable; enter \$0.00 if the company received no money. County Ethics Code Secs.2-11 and 2-11.1 (k)(2).

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. If the facts associated change, please contact us for additional guidance. 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.