



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Alejandro J. Fernandez, Senior Communications/Legislative Aide
Miami-Dade Commissioner Rebeca Sosa, District 6

FROM: Jose J. Arrojo
Executive Director

SUBJECT: INQ 2021-01

DATE: January 8, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest with your tentative appointment to the Miami Beach Planning Board.

Facts:

You are employed at the Office of Miami-Dade Commissioner Rebeca Sosa as a Senior Communications/Legislative Aide. Your job duties include assisting the Commissioner and staff with legislation and policy and generating communications work product. Miami Beach is not included within County District 6.

You are pending appointment to the Miami Beach Planning Board (“Board”). The Board serves as a local planning agency pursuant to the State and the Local Government Comprehensive Planning and Land Development Regulations Act (F.S. ch. 163). The specific duties and powers of the Board are detailed in Sections 118.51 to 118.53 of the Miami Beach Code. Notably, the Board may consider applications pertaining to conditional use permits, amendments to these land development regulations, change of zoning district boundaries and comprehensive plan amendments and future land use map changes.

Issue

Whether any prohibited conflict of interest would exist between your County employment and your appointment to the Miami Beach Planning Board.

Discussion

The County Ethics Code does not prohibit a County employee from serving on a County or municipal board. However, Section 2-11.1(j) of the Ethics Code prohibits County employees from engaging in certain activities that would impair their independence of judgment in the performance of their public duties to the County.

Because County District 6 does not include Miami Beach, then it does not appear that there is a prohibited conflict between your public employment and contemplated municipal board service.

Nevertheless, you should be very mindful of this provision given the fact that you work on the staff of an elected County official. As regards this section of the Ethics Code, you should not deal in your County position with any issue that could foreseeably come before you as a member of the municipal board and vice versa. You are reminded that certain matters relating to the County Seaport, proposed public transit lines from the mainland to the Miami Beach, and other matters relating to large County infrastructure projects often impact Miami Beach, and the District 6 Commissioner may be involved as well as her staff.

Moreover, as regards your voting as a member of the Board, Section 2-11.1(v) of the Ethics Code prohibits municipal board members from voting on matters involving entities in which they have any of the following relationships (officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) if they would be directly affected by the vote. Because you are a County employee, you should be cautious regarding any Board vote involving the County and you are encouraged to seek ethics guidance if you are in doubt regarding your vote as a Board member.

Section 2-11.1(g) of the Ethics Code prohibits board members from exploiting their official positions to secure special privileges or exemptions for themselves or others. Thus, if as County employee you are required to attend municipal board meetings during working hours, then you should coordinate with your supervisor and confirm that voluntary Board activity is permissible. The better practice would be to adjust your schedule such that the Board activities are not conducted during your regular County work hours.

Also, you should never engage in any action as a municipal board member that suggests that you are using your County title, employment, position, or relationship with a County elected official.

Likewise, Section 2-11.1(h) of the Ethics Code prohibits board members from disclosing confidential information obtained through their official positions with the County or using such information, directly or indirectly, for personal gain or benefit.

You should know that there are state and local laws in addition to the County Ethics Code that address dual County and municipal service. The Ethics Commission is not authorized to interpret or enforce those provisions. We note them herein for informational purposes.

The Florida Constitution prohibits dual office holding. The dual officer holding provision prohibits a person from simultaneously serving in more than one "office" under the governments of the state, counties, or municipalities. The prohibition applies to both

elected and appointed offices and so employees may be impacted if the employee's job embraces the idea of tenure, duration, and the job duties involve some delegation and exercise of a portion of the sovereign power.

While your municipal planning board position may constitute an office for these purposes, from your description of your County duties, it would appear that this employment would not qualify as office holding.

Section 1.05, of County Code, provides that any elected or appointed county official who holds any other elective office, whether federal, state, or municipal, shall forfeit his county position. That section also provides that a County employee who qualifies as candidate for election to certain County offices must take a leave of absence from his or her county position until the date of the election and shall, if elected, immediately forfeit his or her county position.

Since the position on the municipal planning board is not an elected one, then it would appear that this section is inapplicable to your proposed service.

Conclusion:

For the reasons detailed above, and based on the facts presented, there is no prohibited conflict of interest that would arise from an application of the County Ethics Code to your service as a member of the Miami Beach Planning Board while employed as a Senior Communications/Legislative Aide in the Office of District 6 Miami-Dade Commissioner Rebeca Sosa.

This opinion only construes the Miami-Dade Ethics Code, and it is based on the facts as you have presented them to the Ethics Commission. Any comment regarding other state or local laws is included for informational purposes only.

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.