



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Pierre Chammas, Sr. Budget Analyst
Office of the Commission Auditor

Evelyn Avila, CPA, Budget Manager
Office of the Commission Auditor (OCA)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-11 [Outside Employment § 2-11.1(j) and k(2); Reverse Two-Year Rule § 2-11.1(x)]

DATE: January 25, 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 in your proposed outside employment.

Facts:

You were recently employed as a Senior Budget Analyst at the Miami-Dade County Office of the Commission Auditor (hereinafter “OCA”). Your job responsibilities include making recommendations regarding departmental policy, programmatic and budgetary issues, assisting in the planning and programming of large-scale departmental capital improvement projects, and working with department directors and other departmental budget and administrative employees throughout the year in the preparation, analysis, monitoring and reporting on departmental operating and capital budgets. Your duties also include conducting financial and programmatic research, performing data entry and spreadsheet development tasks, performing staff training, making presentations to the public, and conducting budget-related special assignments. You exercise considerable independent judgment in the analysis of multiple complex departmental budgets involving fund complexities and significant community service issues.

You are seeking to engage in outside employment with The Florida International University Foundation, Inc. (hereinafter “The FIU Foundation”). The FIU Foundation is a non-profit corporation which is registered as a County vendor.

You advised that The FIU Foundation is your former employer. You explained that The FIU Foundation has requested that you provide support to fill in a gap (created by you leaving the entity) for monthly production reports. You stated that this will be a temporary limited engagement, with an estimated duration of 12 weeks.

We have spoken to Ms. Evelyn Avila, your supervisor at the OCA. She stated that OCA collaborates with FIU Jorge M Perez Metropolitan Center. The engagement is once a year where FIU Metropolitan Center assists OCA in compiling information and provides insight for the Status of Women in Miami Dade County Report.

She however indicated that The FIU Foundation, which would be your outside employer, does not currently have a contract with the OCA. Further, the OCA does not currently oversee or administer the contract or grant that The FIU Foundation has with Miami-Dade County. Ms. Avila agreed that in the event that the OCA is given any oversight or administration duties regarding The FIU Foundation’s contract or grant with the County, you should immediately advise and seek an opinion from the Ethics Commission.

Discussion:

The County Ethics Code prohibits County employees from engaging in other employment that would impair their independence of judgment in the performance of their public duties. *See* Miami-Dade County Ethics Code at 2-11.1(j). To that end, it becomes imperative for all employees to avoid any and all instances which represent or may represent conflicts between their personal interest and their public duties. *See* County’s Administrative Order 7- 1.

Consequently, is within the discretion of County department directors to deny outside employment if it is determined, *at any time*, to be contrary, detrimental, or adverse to the interest of the County or the employee’s department. *See* RQO 16-02 and RQO 00-10. When determining whether to grant permission to engage in outside employment, a department director may ask the Ethics Commission for an opinion regarding potential conflicts of interest with a County employee’s current or proposed outside employment. *See* RQO 16-02, and INQ 13-28.

Inquiries concerning conflicting outside employment often involve a consideration of a myriad of factors, among them, as in this case, whether the employee’s outside employer is a County vendor possibly providing service to the same County department/division that the County employee is assigned.

Generally, the County Ethics Code does not prevent an employee from being employed by a County vendor, *as long as the employee does not have any involvement with the vendor’s contract*. *See* RQO 16-05; INQ 17-236, INQ 15-115, and INQ 11-67. In this instance, it is our understanding that while The FIU Foundation is listed as an active County vendor, the entity does not currently have any contract with OCA. You therefore have no involvement

with the vendor's contract with the County. We do however concur with Ms. Avila, that in the event the OCA is given any contract-related duty, including oversight or administration duties regarding The FIU Foundation's contract or grant with the County, you should immediately advise and seek an opinion from the Ethics Commission.

Additionally, pursuant to the Reverse Two-Year Rule in Section 2-11.1(x) of the Code, you are prohibited from performing any County contract-related duties regarding The FIU Foundation, for two years following your employment with the entity. "Contract-related duties" include, without limitation, "service as a member of a County certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding the contract." This means that as a County employee, you may not become involved in the County's transactions with The FIU Foundation for two years following your employment with that entity.

Further, you must abide by the limitations outlined below to avoid a conflict:

- 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 shall not engage in activities that relate in any way to your outside employment during regular business 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 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 The FIU Foundation. 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, or The FIU Foundation. See Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent The FIU Foundation before any County board or agency. See Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for The FIU Foundation, it is important to note that you would be prohibited from doing any such activities on behalf of FIU Foundation.
- You must complete an Affidavit with the Miami-Dade Clerk of the Courts, disclosing employment with a County vendor;
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director 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.

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.