



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Lieutenant Richard Gonzalez
Miami Dade Fire Recue

Chief Danny Crespo
Miami Dade Fire Recue

FROM: Etta Akoni, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022 – 10 Outside Employment §2-11.1(j)

DATE: February 1, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your outside employment with Braxton College as a Co-Owner and Vice President of Admissions.

Facts:

You are a licensed paramedic for Miami Dade Fire Recue (MDFR). You are stationed at MDFR Station 7 located at 9350 NW 22 Avenue, Miami FL 33147. Your responsibilities as a paramedic are to respond to and assist with all medical emergencies in your assigned area of Miami Dade County. You oversee a MDFR truck and three (3) team members. You also have administrative duties such as performing employee evaluations, verbal counseling, and disciplinary actions. You, along with a captain who is also assigned to Station 7, are responsible for ordering supplies, organizing, and cleaning the facilities, and making work orders for repairs to the station. Moreover, on every shift, you, and the captain on duty, are responsible for delivering some aspect of training to the firefighters under your supervision.

Since 2018, you have been a partial owner of Braxton College. You currently serve as the Braxton College Vice President of Admissions and Compliance. Braxton College is a for-profit college that is nationally accredited and offers educational programs in the allied

health, emergency medical and fire service professions, diploma programs, associate degree programs, and bachelor's degree programs. Braxton College has facilities in Fort Myers, Florida, and Braxton College courses are also provided *remotely* as needed. You do not currently teach or train for Braxton College. Your work for Braxton College does not occur during your assigned work hours for MDFR, you do not use County equipment for your work with Braxton College, and your work does not serve the same clients in both positions. **As of the date of this opinion, Braxton College does not contract with Miami Dade County or any municipality within Miami Dade County to provide its training or continuing education services.** However, some Braxton College students are Miami Dade County employees, but those students have come to Braxton College on their own accord.

Issue Whether a prohibited conflict of interest may exist between your County employment as a Lieutenant for Miami- Dade Fire Recue and your outside employment with Braxton College.

Analysis and Opinion

There are several sections of The Conflict of Interest and Code of Ethics ordinance (County Miami Dade Ethics Code), listed below, which are applicable to this situation.

- A. **§ 2-11.1 (j) - Outside Employment:** “Conflicting employment prohibited. No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.”

This section of the County Ethics Code prohibits County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties in order to prevent the creation of a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: “Under no circumstances shall a County employee accept outside employment...*where a real or apparent conflict of interest with one's official or public duties is possible.*” (Emphasis Added)

Inquiries concerning conflicting outside employment require consideration of a multiple factors. First, in our review of your request and the facts presented, we found that your specified work responsibilities with Braxton College do not overlap with your work responsibilities for MDFR.

Second, while it is understood that you do not provide instruction at Braxton College, the work of Braxton College (an entity you partially own) has a partial parallel to your official duties for MDFR, in that your regular duties as a Lieutenant for MDFR require that you provide MDFR employees under your supervision with training relevant to the job of a MDFR paramedic. Braxton College offers educational programs in the emergency medical and fire service professional fields.

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. Outside employment that shares some of the knowledge base used in your County work but does not involve an 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, INQ 20-43, INQ 21-95, and INQ 14-163.

Third, as Vice President of Admissions and Compliance at Braxton College, course and program enrollment are likely a part of your work responsibilities. As an experienced member of MDFR and a manager over other MDFR team members, you also have potential influence amongst other members of MDFR regarding what professional educational courses they select. Combined, these two facets of your MDFR employment and outside employment Braxton College create a potential ability and opportunity to recruit MDFR employees to attend Braxton College. These tangents between your MDFR and Braxton College responsibilities may create an appearance of a conflict of interest.

The Ethics Commission has previously reviewed three similarly situated circumstances. In RQO 09-16, the Ethics Commission previously opined that a County Fire Dept. lieutenant could engage in outside employment, through his privately owned company, training County firefighters in HazMat because in his capacity as a County firefighter, he was not involved in the training of county employees, did not use County equipment or County time to engage in private training, and did not compete with the County for training dollars. *See* RQO 09-16.

In INQ 16-13, the Ethics Commission previously opined that a Division Chief in charge of the Construction Division for Miami-Dade County Public Works and Waste Management could engage in outside employment as an independent contractor with a nonprofit organization to conduct training classes in the storm water utility field for certified storm water operators (level 1 and 2) in the Miami-Dade County area, including County employees because County PWWM employees could attend the storm water operator certification training, but *no County employee under the director's supervision was attending the training.*- (Emphasis Added).

Lastly in INQ 17-232, the Ethics Commission previously opined that a Training Specialist II for the Training Bureau at the Miami-Dade Corrections and Rehabilitation Department (MDCR) could engage in outside employment as an adjunct professor at the Miami Dade College School of Justice without creating the likelihood of a conflict of interest under the specific conditions that Miami-Dade College did not contract with MDCR for the purposes of training MDCR staff; the Training Specialist II did not have the authority to approve or disapprove any agreements for services between Miami-Dade College and MDCR for purposes of training MDCR staff; the Training Specialist II have no involvement in the selection, oversight, or administration of County training vendors; *and in the event that MDCR staff attended a class taught at Miami-Dade College by the Training Specialist II as part of their pursuit of their college education at Miami-Dade College, their attendance*

would have no effect on their County assessments and promotions within MDCR. (Emphasis Added) See INQ 16-137; INQ 10-125; and INQ 05-143.

Based on these prior COE opinions, your outside employment with Braxton College must adhere to the following conditions in order to avoid the creation of a conflict of interest: Braxton College cannot contract with MDRF; You cannot be authorized to approve or disapprove any agreements for services between MDRF and Braxton College; You cannot have any oversight or administration of MDRF training vendors; and lastly, in the event that MDRF staff decide to attend Braxton College, their attendance should not have any effect on their County assessments and promotions within MDRF. See INQ 16- 288

To ensure the mitigation of the appearance of a conflict of interest and solidify your independence of judgment, you must abide by certain additional limitations and cautions outlined below :

- 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 your scheduled work hours (including phone calls, text messages, e-mails, or other communications) and may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with this outside employment, even after work. See County Ethics Code Section 2-11.1(g); 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, for the benefit of the Braxton College or Braxton College's clients. See Section 2-11.1(h), Miami-Dade County Ethics Code.
- You will not use your official position to secure special benefits or privileges for Braxton College, or any student and all alumni of Braxton College. See Section 2-11.1(g), Miami-Dade County Ethics Code. This restriction includes the recruitment or solicitation MDRF employees to be Braxton College students.
- You must file, under oath, an annual "Outside Employment Statement" with the Miami Dade Elections Department no later than 12 Noon on July 1st of each year, including the July 1st following the last year the person held such employment. Said statement should include the source of the outside employment, the nature of the work being done pursuant to the same and any amount or types of money or other consideration received by the employee from said outside employment. See Section 2-11.1(k)(2), Miami-Dade County Ethics Code.
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- You may not represent Braxton College, lobby for Braxton College, or contact anyone employed by a Miami Dade County or on a County board in an attempt to

influence a decision about any contract related to Braxton College. Miami-Dade Code 2-11.1(m)(1), RQO 04-173, INQ 19-32.

Moreover, Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28. The County's Administrative Order No. 7-1 gives a County department director the ultimate discretion to deny outside employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 12-07; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

B. § 2-11.1 (c)(1) and (2) - Contracting with Miami Dade Fire Rescue

(1) No person included in the terms defined in subsection (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business, except as provided in subsections (c)(2) through (c)(6) in which he or she or a member of his or her immediate family has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable...

(2)... However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

Although Braxton College provides educational services to some Miami- Dade County employees, the relationships are independently developed outside of their employment with Miami- Dade County. Braxton College does not contract with Miami Dade County or any municipality in Miami Dade County to provide its training or continuing education services. As you are co-owner and Vice President of Admission at Braxton College, Braxton College may not contract to provide services for MDFR while you are employed by MDFR. **Please note, you must obtain an ethics opinion prior to conducting any business with Miami-Dade County.** *See* Section 2-11.1(c), County Ethics Code

After reviewing the facts you have provided to us and pertinent sections of the County Ethics Code, there appears to be no conflict of interest for you as a lieutenant with MDFR to conduct outside employment with Braxton College, a privately owned for- profit educational institution that provides training for emergency medical and fire service professions and related careers as long as you abide by the limitations and conditions addressed herein. However, ultimate approval of outside employment resides with your department supervisors.

Please note that this memorandum does not grant you permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department Director.

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, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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 Commission on Ethics 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.