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June 13, 2022

Via U.S. Mail & email transmittal:
oamuz@hialeahfl.gov

Oscar R. Amuz
Executive Assistant to the Mayor
City of Hialeah
501 Palm Avenue, 4th Floor
Hialeah, Florida 33010

Re: INQ 2022-101, Conflicting Outside Employment, Section 2-11.1(j), County Ethics Code

Dear Mr. Amuz:

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 volunteer with Hope for Autism United for Soccer, Inc.

Facts:

The city of Hialeah utilizes a strong mayor and city council system. In this form of municipal government, the city council serves as the city's primary legislative body while the mayor serves as the city's chief executive.

You are the Executive Assistant to the Mayor of Hialeah and use the working title of Community Liaison. In this role, you are a direct report to the Mayor and are engaged with the Hialeah community on his behalf. The job description for the classification provides that you may be assigned to manage the day-to-day operations of the Office of the Mayor. The Executive Assistant to the Mayor is described as a “highly responsible management position” in the city’s job description.¹

Importantly, as regards this ethics guidance, an Executive Assistant to the Mayor may be involved “in the coordination of City functions” and assigned to track and “identify the impact of projects

¹ Mr. Amuz uses the working title of “Community Liaison” but provided the job description for the job classification of “Executive Assistant to the Mayor.” The job responsibilities described herein are derived from the job description provided.

or initiatives on City departments.” It appears that you may be tasked with monitoring the functions or performance of various city departments, as assigned by the Mayor.

Prior to your recent hire by Hialeah, you were employed as the Chief Executive Officer and President of Hope for Autism United for Soccer, Inc. (HAUS). HAUS is a Florida nonprofit corporation. HAUS has a physical office in Hialeah.

After your hire, you have remained involved with HAUS as an uncompensated volunteer. In this volunteer role, you serve as soccer coach for children with autism. Your coaching occurs on weekends at a soccer field located in Opa-locka.

You would like to be engaged in charitable fundraising on behalf of HAUS, to include an Autism Soccer Walk that will be held in a County owned park, located in Hialeah. Also, you would like to offer coaching services for children with autism in Hialeah and also train soccer coaches in Hialeah on how to work with persons with Autism Spectrum Disorders.

Finally, you may be involved in seeking charitable solicitation activities in support of HAUS.

Issue:

Whether a mayoral executive assistant’s uncompensated volunteer service with Hope for Autism United for Soccer, Inc., a Florida nonprofit, which includes coaching and fundraising, is permissible under Section 2-11.1 (j) of the County Ethics Code relating to conflicting outside employment.

Discussion and Opinion:

Serving as a volunteer with a nonprofit on a compensated or uncompensated basis, if the employee is involved the administration of the entity, may constitute outside employment. (*See generally* RQO 17-03) Moreover, in abundance of caution, when an employee has a public and prominent position reporting directly to a mayor, then even if the employee is not actively engaged in administration of the entity, the volunteer engagement will be treated as outside employment. (INQ 2021-70; INQ 2021-89)

Section 2-11.1(j) of the County Ethics Code prohibits Hialeah employees from accepting outside employment which would impair the independence of judgment or performance of his or her public duties. ²

In this instance, your uncompensated and voluntary engagement as a volunteer member of HAUS 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 municipal work hours and would be performed using your personal and HAUS resources. (*See generally* INQ 19-60)

² You should consult with Hialeah’s Human Resources Department regarding authorization to engage in outside employment. Permission to engage in outside employment is a municipal personnel function and within the city’s discretion. The Ethics Commission has no role or authority to interfere with a municipality’s decision to prohibit outside employment.

There is no prohibition on your volunteer coaching activities with HAUS, even if the activities take place in Hialeah or in Hialeah municipal parks.

Should HAUS decide to apply for a grant or donation from the city of Hialeah, monetary or in-kind, and the receipt of the grant or donation 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 city and that neither you nor any municipal departments assigned to you for supervision or monitoring are involved in the grant application, award, supervision, compliance or enforcement. (Sec. 2-11.1(c)(2) and (d), County Ethics Code; INQ 2021-25; INQ 2021-70; INQ 2021-89)

Even if the grant application, award, or administration occurred without the involvement of any of department assigned to you for supervision or monitoring, you may 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 city to take an official action. (INQ 16-48; 16-22; INQ 14-170; INQ 12-13; INQ 11-01; INQ 10-201)

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

However, outside of a prohibited quid pro quo scenario, solicitation of gifts on behalf of a nonprofit 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 Hialeah vendors and lobbyists on behalf of HAUS, even if the solicitation is not prohibited, in order to avoid situations where a city vendor or contractor might accede to a request for contribution in exchange for its continued business relationship with the city. (INQ 16-275)

The Ethics Commission's best guidance, because of the nature of your position as the Mayor's Executive Assistant, is that should you decide to engage in fundraising or charitable solicitation activities on behalf of the HAUS, that you refrain from contacts with City of Hialeah vendors or contractors.

Your job description affords the Mayor significant discretion in assigning you a variety of job functions. As is noted above, these may include monitoring municipal departments or processes. For this reason, it is recommended that you refrain from appearing before the Hialeah Council on behalf of HAUS.³

A number of standard prohibitions that apply to municipal employees engaged in outside employment would apply to your service with HAUS:

³ See Sec. 26-33(a), Hialeah Code of Ethics, which provides in relevant part: "No person named in section 26-32 shall enter into any contract or transact any business with the city, either directly or through any person or agency acting under contract to the city. *No such person shall appear in representation of any third party before the city council or other city board, commission or agency except as provided in subsection (b) of this section.*" (*emphasis added*)

- You may not use city time or resources in your outside employment. (Sec. 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 city work hours, including phone calls, or any other communication and/or use of city resources, including but not limited to phones, copiers, computers, fax machines, city computer programs, computer licenses purchased by the city, city vehicles, in connection with your outside employment, even after work. (Sec. 2-11.1 (j) and (g), County Ethics Code; INQ 05- 29; INQ 15-240)
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your city employment to derive a personal benefit, or a benefit for HAUS or its clients and service recipients. (Sec. 2-11.1(h), County Ethics Code)
- You may not exploit your city position to secure special privileges or exemptions for yourself, HAUS or its clients and service recipients. (Sec. 2-11.1(g), County Ethics Code)

Finally, 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 an Executive Assistant to the Hialeah Mayor.

This opinion is limited to the facts as you presented them to the Commission on Ethics, or as were presented by municipal counsel on your behalf and is limited to an interpretation of the County and Hialeah Ethics Codes 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.

Please do not hesitate to contact me should you require any additional assistance.

Sincerely,



Jose J. Arrojo
Executive Director

cc: Lorena Bravo, Hialeah City Attorney
David Jove, Hialeah Assistant City Attorney
All COE Legal Staff

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.