



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Rolando Valdés
Trash Truck Driver 2
Department of Solid Waste Management

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-113, Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: June 30, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible ethics issues arising from your position as Vice- President for the American Federation of State, County and Municipal Employees (AFSCME) Florida Council 79 Executive Board.

Facts: You are employed as a Trash Truck Driver 2 for the Department of Solid Waste Management (DSWM). You inquire whether your activities as Vice President for the American Federation of State, County and Municipal Employees (AFSCME) Florida Council 79 Executive Board, a trade union of public employees, constitute outside employment under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”).

As a Trash Truck Driver 2, your duties include operation of the tractor-trailers for the Transfer Division which transfers solid waste collection from the transfer station to a specified location.

AFSCME is the largest trade union of public employees in the United States. It represents 1.3 million public sector employees and retirees, including health care workers, corrections officers, sanitation workers, police officers, firefighters, and childcare providers. Founded in Madison, Wisconsin, in 1932, AFSCME is part of the AFL–CIO, one of the two main labor federations in the United States. You have been appointed Vice- President of the Florida chapter (Council 79) of AFSCME organization. You are not a part of the local AFSCME union.

As part of your duties as Vice-President, you attend scheduled council meetings and meet and attend functions with elected officials to further the mission and policies of AFSCME Florida.

You advise that you do not utilize County resources for council activities, nor do you assist the same clients. You are provided a daily stipend or compensation for your participation in council activities. Additionally, the council reimburses you for your council-related travel and time away from your County position.¹

Analysis and Opinion:

Section 2-11.1(k)(2) of the County Ethics Code provides that, “[a]ll full-time County and municipal employees engaged in any outside employment . . . shall file, under oath, an annual report indicating the source of the outside employment” Outside employment is considered “any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated.” RQO 17-03. As you are being compensated and/or reimbursed for your council activities, you are engaged in outside employment. *See* RQO 06-27.

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit 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 thereby creating 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.” Thus, County department directors have the discretion to deny outside employment if they find that it is contrary, detrimental, or adverse to the interest of the County and/or the employee’s department. *See* County’s Administrative Order 7-1 and RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County’s Administrative Order 7-1. Directors/Supervisors 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.

As noted above, the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment that is likely to create conflicts of interest between the employee’s County responsibilities and their outside job duties. The Ethics Commission has previously opined that a Miami-Dade Corrections and Rehabilitation employee does not have a conflict of interest

¹ You should contact the County's Human Resources Department's Labor Relations section for guidance regarding the County's leave policies regarding union activities. However, the COE has previously addressed the interplay between leave and outside employment on several occasions. County employees may engage in (approved) outside employment while on annual leave without violating the County Ethics Code. *See* INQ 22-97; INQ 18-222; INQ 18-210; INQ 11-57; INQ 11-36; INQ 11-27; INQ 11-25; INQ 06-26. County employees may also engage in outside employment on furlough days or during a leave of absence without violating the County Ethics Code. *See* INQ 14-103 (addressing furlough); INQ 14-41 (addressing leave of absence). In contrast, County employees may not use sick leave to engage in their outside employment. *See* INQ 09-194.

regarding his outside employment with a non-profit organization, which raises funds for the children of fallen law enforcement officers, because his outside employment would not impair his independence of judgment in the performance of his County duties. *See* INQ 18-132; *see also* INQ 19-41 (A County employee may serve on the board of directors for a nonprofit organization as long as he does not appear in front of any County board or agency to make a presentation seeking any benefit on behalf of the nonprofit organization or, in any way, exploit his official position with the County to benefit the nonprofit. Lastly, the Ethics Commission also found that the Director of the County Public Housing and Community Development Department (PHCD), does not have a conflict of interest between his County employment and his prospective service as a Director of Rebuilding Together (RT), a nonprofit entity, because of the charitable nature of the nonprofit that is funded primarily through grants and donations; he will be engaged with the RT's national organization based outside of Miami-Dade County, not the local affiliate; he will not utilize any County resources in his service to RT; and all the work he performs for RT will occur outside of his County employment hours. *See* INQ 21-70.

Based on the information provided, it appears to be unlikely that the type of outside employment that you are seeking to engage in would impair your independence of judgment in the performance of your County duties as Trash Truck Driver 2 for DSWM. This is because there is no overlap between your public duties and your outside employment, you will not use the same resources, you will not assist the same clients, and the work would be performed outside your County hours.

Nevertheless, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment in order 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 for the benefit of AFSCME. *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 AFSCME. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent AFSCME before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173.

- 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.

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 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.