



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Juan Huerta, Senior Personnel Specialist, Miami Dade Elections
Jose Ponce, Deputy Supervisor, Miami Dade Elections

FROM: Etta Akoni, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022 – 120 Outside Employment §2-11.1(j)

DATE: July 26, 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 requested outside employment with Off Beat Management as a Freelance Human Resources Business Consultant.

Facts:

You are a Senior Personnel Specialist for Miami Dade Elections (Elections). Your responsibilities as a Senior Personnel Specialist include, but are not limited to, performing specialized personnel management duties in the development and evaluation of diversified training programs for the department; assisting with the development and maintenance of departmental Standard Operating Procedures and Policies; performing specialized processes, payroll processes, and employee benefits processes; facilitating seasonal staff recruitment; in addition to performing other various personnel management processes. Your responsibilities also include planning, implementing, recommending, and evaluating a variety of training programs for the Elections Department, in addition to performing various other personnel duties.

You plan to serve as a Freelance Human Resources Business Consultant for Off Beat Management. The position of Freelance Human Resources Business Consultant includes, but is not limited to, advising management professionals on the formulation and administration of plans and policies for human resource activities via social media; providing online consultations for human resource issues relating to global and regional trends; providing human resources policy interpretation; and participating in professional

development sessions and online seminars. Off Beat Management is a family-owned management company, but it is not owned by any of your family members. You do not currently work for Off Beat Management but did work for the company prior to the COVID-19 pandemic. Your work for Off Beat Management does not occur during your assigned work hours for Elections, you do not use County equipment for your work with Off Beat Management, and your work does not serve the same clients in both positions. As of the date of this opinion, Off Beat Management does not contract with Miami Dade County to provide its services.

Issue:

Whether a prohibited conflict of interest may exist between your County employment as a Senior Personnel Specialist for Elections and your outside employment with Off Beat Management as a Freelance Human Resources Business Consultant.

Analysis:

The Conflict of Interest and Code of Ethics ordinance (County Ethics Code), addresses outside employment in § 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 Off Beat Management does not overlap with your work responsibilities for Elections. Second, the work of Off Beat Management has some parallels to your official duties for Elections, in that both positions require that you interpret personnel policy for administration and that you execute said policies, in addition to development of personnel trainings oriented around human resource issues.

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.

Opinion:

After reviewing the facts you have provided to us and pertinent sections of the County Ethics Code, there does not appear to be a conflict of interest for you as a Senior Personnel Specialist for Miami Dade Elections to have outside employment as a Freelance Human Resources Business Consultant for Off Beat, as long as you abide by the limitations and conditions addressed herein. *However, ultimate approval of outside employment resides with your department supervisors.*

Based on the prior COE opinions referenced above, your outside employment with Off Beat Management must adhere to the following conditions in order to avoid the creation of a conflict of interest: Off Beat Management cannot contract with Elections; You cannot be authorized to approve or disapprove any agreements for services between Elections and Off Beat Management; and **you cannot have any oversight or administration of Elections human resources consultant vendors.** 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 for 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 Off Beat Management or Off Beat Management'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 Off Beat Management. *See* Section 2-11.1(g), Miami-Dade County Ethics Code. This restriction includes the solicitation of Election employees to be Off Beat Management clients.
- 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.

- You may not represent Off Beat Management or lobby the County on behalf of Off Beat Management, or contact anyone employed by a Miami Dade County or on a County board in an attempt to influence a decision about any contract or other services related to Off Beat Management. 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.

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.