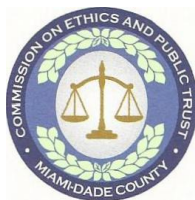


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 29, 2022

Via email only: kcarswell01@gmail.com

Mr. Keith Carswell
Senior Advisor to Miami City Manager
2140 Northwest 114th Street
Miami, Florida 33167

Re: INQ 2022-141, Section 2-11.1(j), Outside Employment, County Ethics Code

Dear Mr. Carswell:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible ethics issues arising from your outside employment.

Facts

You are employed by the City of Miami as a Senior Advisor to the City Manager for Economic Development and Venture Miami. You occupy an executive level position and you report directly to the City Manager. You are responsible for administrative oversight and management of branding the City of Miami as a regional technology and innovation hub and overseeing the Office of Venture Miami. You describe the Office of Venture Miami as a City office that provides support for technology organizations and companies by encouraging relocation to Miami, connecting new-to-market entities with the existing technology ecosystem, connecting talent to jobs, and promoting diversity.

You are the President of the Little River Farms Homeowners Association, an active Florida nonprofit corporation, whose membership includes residents of a neighborhood located in north central Miami-Dade County, Florida, outside of the municipal boundaries of the City of Miami. The association's activities are consistent with those of other homeowners' associations. Your service is voluntary, you are unpaid, and all of your activities on behalf of the homeowners' association occur outside of your municipal work hours.

You are also considering service as the founding chairperson of a political committee as defined in Section 106.011(16)(a), Florida Statutes. You advise that the activities of the committee will not include the support or opposition of candidates seeking election or reelection to City of Miami public office. Similarly, the activities of the committee will not likely relate to matters occurring

within the jurisdictional boundaries of the City of Miami. The committee would solicit political contributions and expend funds in support of its political activities and would also likely endorse candidates for County, State and Federal political office.

You have received permission for engaging in these outside employment activities, as long as your engagement does not violate the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”).

Issues

Whether there is a prohibited conflict of interest that would prevent you from continuing to serve as the uncompensated president of a homeowners’ association.

Whether there is a prohibited conflict of interest that would prevent you from serving as the chairperson of a political committee as defined in Section 106.022(16)(a), Florida Statutes.

Analysis

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. Employees who establish a nonprofit and serve as the Executive Director, President, or Manager of that nonprofit on a compensated or uncompensated basis and are actively involved in the administration of that entity, are engaged in outside employment requiring completion of the outside employment process on a yearly basis. (*See generally* RQO 17-03)²

² *See also* Section 2-11.1(k)(2) (County Ethics Code provides that all full-time municipal employees engaged in any outside employment for any person, corporation or entity other than the respective municipality shall file, under oath, an annual report indicating the source of the outside employment”); Section 2-11.1(i)(1) (County Ethics Code provides that certain specified municipal personnel shall be required to file a financial disclosure by noon of July 1st of each year: (a) a copy of that person’s or firm’s current federal income tax return; or (b) a current certified financial statement on a form of the type approved for use by State or national banks in Florida listing all assets and liabilities having a value in excess of one thousand dollars (\$1,000.00) and a short description of each; or (c) [a]n itemized source of income statement, under oath and on a form approved by the County for said purpose. Compliance with financial disclosure provisions of Chapter 112, Florida Statutes also constates compliance. The municipal employees included in this disclosure provision include the City Manager, Assistant City Managers, Special Assistants to the City Manager, and heads or directors of municipal departments and their assistant or deputy department heads.)

Moreover, in abundance of caution, when an employee has a public and prominent position reporting directly to a mayor or chief executive officer, then even if the employee is not actively engaged in administration of the entity, the volunteer engagement may be treated as outside employment. (INQ 2021-70; INQ 2021-89; INQ 2022-101)

Section 2-11.1(j) of the County Ethics Code prohibits employees from accepting outside employment which would impair the independence of judgment or performance of his or her public duties.³

In this instance, however, conflicts are unlikely to exist because of the nature of the nonprofit homeowners' association, because the uncompensated outside employment would occur separate of your city work hours and would be performed using your personal and association resources, the represented neighborhood is not located within the City of Miami, and because there is no overlap between the neighborhood association's activities and your municipal employment duties related to branding the City of Miami as a regional technology and innovation hub. (*See generally* INQ 19-60; INQ 18-123)

As regards your contemplated service as the founder and chairperson of a Florida political committee, while political activity is constitutionally protected, compensated political work by an employee nevertheless constitutes outside employment.

Conflicts are also unlikely to exist because the outside employment would occur separate from your city work hours and would be performed using your personal and political committee resources. The political committee would solicit contributions and expend funds in support of its political activities and would also likely endorse candidates for County, State and Federal political office but will not be engaged in supporting or opposing candidates for Miami public office and will likely not be involved in any matters occurring within the jurisdictional boundaries of the City of Miami. There is no overlap between your leadership of the political committee's activities and your municipal employment duties related to branding the City of Miami as a regional technology and innovation hub.

With respect to soliciting contributions on behalf of the political committee, even though the County Ethics Code excludes political contributions from the prohibited gift provisions contained in Section 2-11.1(e) of the County Ethics Code, subsection (g) of the Ethics Code nevertheless prohibits employees from using their official position to obtain special privileges or exemptions for themselves or other persons or entities.

³ You should consult with Miami'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.

Consequently, you may not use your official position as a City of Miami executive employee to coerce subordinates, or persons and entities that transact with the City of Miami, to make contributions to the political committee.

Finally, the County's Conflict of Interest and Code of Ethics provides the *minimum standard* of conduct for public officials and employees. 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 a municipal executive and direct report to the Miami City Manager.

As such, you should avoid direct, targeted solicitations of City of Miami vendors and lobbyists on behalf of the political committee, 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. You should scrupulously honor the divide between your activities as the founder and chairperson of a political committee and your city employment. (*See generally* INQ 2021-89)

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest created by your uncompensated service as the president of your homeowners' association. However, you must adhere to the limitations discussed above regarding that engagement.

Likewise, based on the facts presented here and discussed above, you would not have a conflict of interest created by your service as the founder and chairperson of a political committee as long as there is no overlap between the committee's activities and your municipal position, and you are very careful to avoid even the appearance that you are using your public position or resources to support the activities of the political committee.

Other conflicts may apply based on internal City of Miami policies or directives, or under state law. Questions regarding possible conflicts based on City of Miami policies or directives should be directed to your immediate supervisor or the Office of the City Attorney. For an opinion regarding Florida ethics law, please contact 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 Ethics Commission so as to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance or have the employees contact us directly.

Sincerely,



Jose J. Arrojo
Executive Director

Copies: COE Legal Staff
Onaivys Diaz, Executive Assistant

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.