



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Roxana Barba
Cultural Projects Administrator
Miami-Dade County Department of Cultural Affairs

FROM: Loressa Felix, Staff Attorney
Commission on Ethics and Public Trust

SUBJECT: INQ 2022-143, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: October 14, 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 conflicts of interest in your proposed outside employment.

Facts: You are employed as Program Administrator for the Department of Cultural Affairs (DOCA). You have been previously approved by your department to engage in outside employment as a choreographer. As part of your outside work, you have recently been awarded funding through the Knight Foundation to present a multimedia performance featuring local artists including yourself. The funding provided by the Knight Foundation is used to pay yourself and local artists for their performance in the show. FUNDarte, a co-presenter for the performance, will be providing funding for the venue and marketing for the performance. You will receive no direct funding from FUNDarte.

As a Cultural Projects Administrator, you act as a manager over the Community Grants program, a quarterly project-based grant serving arts collectives, arts non-profits, social services organizations, municipalities and universities for six years. You oversee two annual operating grant programs: Developing Arts in Neighborhoods (DAN) and Hannibal Cox Junior (HCJ), as well as the Department's project-based International Cultural Partnerships (ICP) Grant Program and Artist Access, an individual artist grant designed to enrich the artistic practice of Miami-based artists. You give artists and/or organizations guidance on how to apply for funding through the grant programs provided by DOCA. You advise that you have no authority over the grant selection process, as there is a separate panel that makes such decisions. Further, the continued management of grant funding is not overseen by you but by the Department Director and Chief of Grants.

FUNDarte is a non-profit organization dedicated to producing and presenting all art forms that speak to Miami's diverse culture. While FUNDarte has no pending grant application before DOCA, they have received funding in the past. Additionally, FUNDarte has acted as a program fiscal agent with your department, meaning that they receive funding from the department solely for the purpose of paying artists on behalf of the program receiving only a small fee for their service. You have no authority over this program and the program is overseen by the Executive Director and Chief of Grants.

You are inquiring as to any potential conflict that may exist between your position with DOCA and your outside employment relationship with FUNDarte, as a co-presenter for your performance, as a prior recipient of DOCA funding and in its role as a fiscal agent.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code (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."

Generally, the County Ethics Code does not prevent an employee from being employed by a County vendor, as long as the employee does not have any involvement with the vendor's contract. *See* RQO INQ 11-67 and INQ 17-194.

In its prior opinion to you, the Ethics Commission opined that you were permitted with limitations to work with the Miami Theater Center, Inc. (MTC), a non-profit organization and recipient of a County grant provided through a joint initiative between your department and the Children's Trust, because you have no involvement with the program (i.e. you do not select recipients, oversee the program, manage or otherwise enforce the grant agreement). *See* INQ 17-194. The Commission noted that your participation in the commissioned artistic project with MTC would not impair your independence of judgment in the performance of your duties. *See id* citing Section 2-11.1(j), County Ethics Code; INQ 16-215. However, the Ethics Commission cautioned that "[i]n order to avoid any future conflicts, you must refrain from any involvement requiring interaction between your County position and MTC . . . MTC may accept future grants from the County (DOCA) under the SAS-C Grant Program as long as you have not attempted to influence an official decision to benefit MTC in any way." *Id* citing INQ 16-215, INQ 12-12, and INQ 11-01.

In this instance, you have stated that FUNDarte has no current applications pending in your department, although it has received funding in the past. You are also not responsible for the selection of funding recipients nor charged with the administration or oversight of the grant agreement. Consequently, it does not appear that your participation in the commissioned artistic performance with FUNDarte as a co-presenter will impair your independence of judgment in the performance of your County duties. *See* Section 2-11.1(j), County Ethics Code; INQ 16-215, INQ 17-194, and INQ 14-267.

You should also be mindful of Section 2-11.1(g) of the Miami-Dade County Ethics Code, which prohibits a County employee from using her official position to secure special benefits, privileges or exemptions for herself or others. This prohibition has been interpreted very expansively to include any communications, in any form, intended to influence a County employee to take official action. *See* INQ 17-194, INQ 16-22, and INQ 12-13.

Nevertheless, given the relationship between DOCA and FUNDarte, you should be aware and abide by the following limitations outlined below to avoid any conflict in the future:

- 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, for the benefit of Colegial, or for the benefit of Colegial clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- 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.