



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: Elizabeth Martinez
Board Member
Miami-Dade County Library Advisory Board

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-152; Section 2-11.1(j), Conflicting employment prohibited;
Section 2-11.1(v), Voting conflicts; Section 2-11.1(m), Certain appearances and
payment prohibited; Section 2-11.1(g), Exploitation of official position prohibited

DATE: November 7, 2022

CC: Ray Baker, Director, Miami-Dade Public Library System; 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 between your service on a County Advisory Board and your proposed concurrent service on the Board of Trustees of a non-profit.

Facts

You advised that you currently serve as a Board Member on the Miami-Dade County Library Advisory Board. The Library Advisory Board was created with the purpose of bringing together a group of individuals dedicated to providing a public library system for the Miami-Dade metropolitan area to give information, advice, and counsel to the Miami-Dade County Board of County Commissioners (“BCC”) respecting the means and methods by which public library facilities and services may be provided. *See* Miami-Dade County Code § 2-193; *see also* Sunset Review of County Boards for FY 2021 – Library Advisory Board, Res. No. 211604 (Miami-Dade County Commission 2021).¹ You advised that the BCC appointed you to the Library Advisory Board more than three years ago, and that the BCC most recently re-appointed you to the Library Advisory Board in 2021 for another three-year term. You stated that your responsibilities with the

¹ Available online at <https://www.miamidade.gov/govaction/matter.asp?matter=211604&file=true&fileAnalysis=false&yearFolder=Y2021>

Library Advisory Board primarily concern attending quarterly meetings, hearing presentations regarding library operations, and providing advice and suggestions to the Director of the Miami-Dade Public Library System. You are not compensated for your Library Advisory Board service. *See* Miami-Dade Code § 2-198.

You advised that you have been asked to join the Board of Trustees of the Friends of the Miami-Dade Public Library, Inc. (“Friends”). Friends is a Florida not-for-profit corporation. Friends was established to create public interest in the Miami-Dade Public Library System, to promote increased knowledge and understanding of the Library System’s services and needs, and to foster public support for the Library System’s development. *See About the Friends*, <https://friendsofmdpl.org/> (last visited Oct. 28, 2022). You advised that your position on the Friends’ Board of Trustees would primarily involve creating and organizing outreach events and fundraising programming. You advised that serving on the Friends’ Board of Trustees will not be a significant time commitment, stating that it would involve “quarterly,” and not “weekly,” hours. You advised that you will be a voting member of the Friends’ Board of Trustees, and that you will not receive any compensation for your service on the Board.

Issue

Whether any prohibited conflict of interest may exist between your concurrent service on the Library Advisory Board and on the Friends’ Board of Trustees.

Analysis

This inquiry involves several sections of the County Ethics Code, each of which is analyzed below:

A. Section 2-11.1(j) – Conflicting Employment Prohibited

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) provides that no person who is considered County advisory personnel² “shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.” *See* County Ethics Code § 2-11.1(j). Outside employment is considered “any non-County employment or business relationship in which the County employee (or advisory board member) provides a personal service to the non-County employer that is compensated or customarily compensated.” RQO 17-03.

Generally, uncompensated outside employment for a traditional nonprofit entity is not considered outside employment. *Id.* However, a County employee who has “significant managerial responsibilities or working time commitments” with a nonprofit entity could be considered to be engaging in outside employment. *Id.* Multiple factors are considered when determining whether service with a non-profit is considered outside employment, including: (a) whether the person

² County advisory personnel are “the members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners. County Ethics Code § 2-11.1(b)(4).

founded the non-profit; (b) whether the person serves as the non-profit's Executive Director or President, or in some other office; (c) whether the person is responsible for the non-profit's day-to-day functioning or activities; (d) whether the person receives any form of compensation for his or her service to the non-profit; and, (e) whether the person has significant time commitments as part of his or her service to the non-profit. *See* INQ 22-44; *see also* RQO 17-03.

In practice, an employee of the Miami-Dade Public Library System may serve on the Friends' Board of Trustees without giving rise to a prohibited conflict of interest so long as Friends' funds do not directly benefit the employee. *See* INQ 09-112. Furthermore, a member of the Citizens' Independent Transportation Trust ("CITT") who was also an employee of the Miami-Dade County Parks, Recreation, and Open Spaces Department ("PROS"), could serve as the uncompensated Vice-President of the Everglades Bicycle Club ("EBC") without giving rise to a prohibited conflict of interest because there was no overlap in duties that appeared to affect her independence of judgment. *See* INQ 21-13. However, the City of Miami Parks Director could not accept appointment to the Board of Friends of Belafonte-Tacolcy Park ("BTP") – a non-profit entity created for the purpose of raising funds to support programming at the park – because, even though appointment to the Board did not constitute outside employment, he oversaw all City parks in his position as Parks Director, including Belafonte-Tacolcy Park, and his service on the BTP created the possibility that his efforts on behalf of the BTP could interfere with his independence of judgment in allocating City resources to all parks under his supervision. *See* INQ 15-98.

Here, the factors weigh against concluding that your service as a Board Member of the Friends' Board of Trustees constitutes outside employment because: (a) you did not found Friends; (b) you will not serve as the Executive Director or President of Friends; (c) you will not be responsible for the day-to-day functioning of Friends; (d) your service on the Friends' Board of Trustees will not be compensated; and, (e) you advised that you will not have significant time commitments as part of your service on the Friends' Board of Trustees. *See* INQ 22-44. Accordingly, insofar as your service as a Board Member of the Friends' Board of Trustees does not constitute outside employment, then **County Ethics Code Section 2-11.1(j) does not restrict your ability to concurrently serve on the Library Advisory Board and the Friends' Board of Trustees.**

Nevertheless, even if your service as an uncompensated Board Member of the Friends' Board of Trustees constituted outside employment, it would not give rise to a prohibited conflict of interest because the purpose of both the Library Advisory Board and the Friends is to support the Miami-Dade Public Library System. *See* County Ethics Code 2-11.1(j); INQ 21-13. Unlike the City of Miami Parks Director discussed above who was considering an appointment to the Board of non-profit that would support only one of the parks under his supervision, both the entities that you plan to serve on – the Library Advisory Board and Friends – exist to support a single entity: the Miami-Dade Public Library System. *See* INQ 15-98. Accordingly, there is no indication that your service on the Friends' Board of Trustees would impair the independence of your judgment in the performance of your County duties on the Library Advisory Board.

B. Section 2-11.1(v) – Voting Conflicts

The County Ethics Code provides that no person who is considered County advisory personnel:

shall vote on any matter presented to an advisory board . . . on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary, or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

County Ethics Code § 2-11.1(v). Accordingly, for a voting conflict to exist under Section 2-11.1(v) of the County Ethics Code, both prongs must be met. *See* RQO 07-49; INQ 20-73.

In practice, a member of the then-extant Vizcaya Museum and Gardens Trust – the County governing board for Vizcaya – who also served as the President of the Vizcayans – a non-profit organization whose purpose was to provide financial support for the preservation and operation of Vizcaya – could serve in both positions and vote on matters concerning the Vizcayans as a member of the Vizcaya Trust without giving rise to a prohibited conflict of interest because he would not personally benefit from any decision of the Vizcaya Trust. *See* RQO 07-42. Similarly, a member of the Miami-Dade Land Acquisition Selection Committee (“LASC”) could serve as an unpaid volunteer member of the board of the Tropical Audubon Society (“TAS”) and vote on matters related to TAS that came before the LASC, so long as the LASC member did not have any role in preparing the TAS matters presented to the LASC, because the LASC member would not otherwise be directly affected or benefitted from a LASC decision in favor of TAS. *See* INQ 20-73.

Here, as a Board Member of the Friends’ Board of Trustees, you will have a designated relationship with Friends – officer. Nevertheless, **you may vote on matters concerning Friends that are presented before the Library Advisory Board, so long as you did not have any role in preparing the matter for Friends**, without giving rise to a prohibited conflict of interest because you will not be directly affected by any action of the Library Advisory Board concerning Friends due to your status as an uncompensated, volunteer Board Member. *See* County Ethics Code § 2-11.1(v); RQO 07-49; RQO 07-42; INQ 20-73.³

³ You advised that you have a personal and familial history of support for the Miami-Dade Public Library Systems’ Vasari Project, with your mother having written a grant in support of the Project, and specifically requested an opinion regarding the connection. The Vasari Project is “a library collection dedicated to documenting, collecting and preserving Miami-Dade County’s art history from 1945 to the present.” *See The Vasari Project*, <https://mdpls.org/vasari> (last visited Oct. 28, 2022). You further advised that you have no personal or professional financial interests related to the Vasari Project. As such, there does not appear to be any prohibited conflict of interest that would prevent you from serving on the Library Advisory Board and voting on matters concerning the Vasari Project. *See* County Ethics Code § 2-11.1(v). Because the Commission on Ethics does not have jurisdiction over Friends, we cannot opine as to whether your personal connection to the Vasari Project would give rise to a conflict of interest in relation to your service on the Friends’ Board of Trustees. *See* Miami-Dade County Code § 2-1068.

C. Section 2-11.1(m) – Certain Appearances and Payment Prohibited

The County Ethics Code provides that no County advisory personnel, “shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any . . . benefit sought by the third person.” County Ethics Code § 2-11.1(m)(2); *see also* INQ 21-13 (CITT Board Member may not appear before CITT on behalf of EBC, the non-profit for which she concurrently served as Vice-President). The County Ethics Code further provides that no County advisory personnel shall, “receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party.” County Ethics Code § 2-11.1(m)(2).

Here, you are prohibited from appearing and/or lobbying before the Library Advisory Board on behalf of Friends. *See* County Ethics Code § 2-11.1(m)(2); INQ 21-13. Furthermore, insofar as Friends has any matter pending before the Library Advisory Board, you would be prohibited from accepting any compensation from Friends, whether directly or indirectly, for services rendered to Friends in connection with that matter. *See* County Ethics Code § 2-11.1(m)(2).

D. Section 2-11.1(g) – Exploitation of Official Position Prohibited

The County Ethics Code provides that no County advisory personnel, “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others,” unless expressly permitted by ordinance. County Ethics Code § 2-11.1(g).

Here, you are prohibited from using your position as a Board Member of the Library Advisory Board to secure any special privileges or exemptions for yourself and/or for Friends. *See id.*; INQ 21-13 (prohibiting a CITT Board Member from using her office to secure any special privileges or exemptions for EBC, the non-profit organization on which she concurrently served as Vice-President). This means that you may not advantage Friends in any funding application or other County decision-making situation that might benefit Friends that comes before the Library Advisory Board.

Opinion

Based on the facts presented here and discussed above, you are not prohibited from concurrently serving as a Board Member on the Miami-Dade Library Advisory Board and as a Board Member of the Board of Trustees of the Friends of the Miami-Dade Public Library, Inc. *See* County Ethics Code § 2-11.1(j); INQ 22-44; INQ 21-13. Furthermore, you are not prohibited from voting on matters concerning Friends that come before the Library Advisory Board so long as you did not have any role in preparing on behalf of Friends the matter being voted upon. *See* County Ethics Code § 2-11.1(v); RQO 07-49; RQO 07-42; INQ 20-73.

However, with regard your concurrent service on both the Library Advisory Board and the Friends’ Board of Trustees, you are required to abide by the restrictions discussed above. *See* County Ethics Code §§ 2.11-1(g), (m)(2). Additionally, you are reminded that, pursuant to County Ethics Code

Section 2-11.1(i), as a member of a County advisory board **you must file a financial disclosure form every year.**

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from the Mayor's Office or the BCC or under state law. Questions regarding possible conflicts based on mayoral or BCC directives should be directed to the Mayor's Office or the County Attorney's Office. 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/>.

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.