



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Gabriel Paez
Community Advocacy Program Officer 1
Miami-Dade County Board of County Commissioners

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-164; Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(m), Certain appearances and payment prohibited; Section 2-11.1(g), Exploitation of official position prohibited

DATE: December 16, 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 between your County employment and your proposed concurrent participation in the Leadership Team of the Miami Lesbian, Gay, Bisexual, Transgender, Queer, Intersexual, Asexual + Social Determinants of Health Accelerator Plan (“Miami LGBTQIA+SDoH Plan”).

Facts

You are a Community Advocacy Program Officer 1 for the Miami-Dade County Board of County Commissioners (“BCC”). Specifically, you are the Program Director for the Miami-Dade County Lesbian, Gay, Bisexual, Transgender, and Queer (“LGBTQ”) Advisory Board. You indicated that you are the only County staff working for the County LGBTQ Advisory Board and your responsibilities are similar to that of a clerk of the board when meetings are held, but that you otherwise work to promote the County LGBTQ Advisory Board and its mission.

You advised that you have been asked to join the Leadership Team of the Miami LGBTQIA+SDoH Plan by Mr. Michael Roman, a City of Miami employee and the Program Manager for the Miami LGBTQIA+SDoH Plan. Mr. Roman provided the project narrative for the Miami LGBTQIA+SDoH Plan, which states that the Miami LGBTQIA+SDoH Plan is a grant-

funded project aiming to reduce the lack of local data pertaining to social determinants of health¹ and their effects on chronic disease within Miami’s LGBTQIA+ community. Per the project narrative, the project is essentially a public-private partnership between the City of Miami, as the applicant agency, and Urban Health Partnerships (“UHP”), as the implementing partner agency. UHP is a Florida not-for-profit corporation that builds the capacity of communities, governments, and organizations to advance health equity through policy and environmental change.² This public-private partnership will administer the grant funds, provided by the federal Centers for Disease Control and Prevention (“CDC”), with the grant ending in September 2023.³ Per the project narrative, the City and UHP will oversee the Leadership Team, which will be a group of individuals representing various sectors and expertise areas that will gather to refine the Work Plan for the project and then meet on a consistent basis (at least ten times) to ensure uniform and coordinated implementation of the Miami LGBTQIA+SDoH Plan. The project narrative calls for the Leadership Team to form and meet in January 2023.

Mr. Roman advised that the Miami LGBTQIA+SDoH Plan’s Leadership Team will not be a City of Miami Advisory Board, and that members of the Leadership Team will not constitute a decision-making body; rather, it will be a group of community and organizational leaders providing input to, and helping guide implementation of, the Miami LGBTQIA+SDoH Plan. Mr. Roman advised that membership on the Leadership Team is wholly voluntary, and that there is no provision for compensation for the role. Finally, Mr. Roman advised that he invited you to join the Leadership Team because of your connection with the County LGBTQ Advisory Board.

Issue

Whether any prohibited conflict of interest may exist between your County employment and your concurrent participation in the Leadership Team of the Miami LGBTQIA+SDoH Plan.

Analysis

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

¹ Social determinants of health “are the nonmedical factors that influence health outcomes.” See *Equitably Addressing Social Determinants of Health and Chronic Diseases*, NATIONAL CENTER FOR CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION (NCCDPHP), <https://www.cdc.gov/chronicdisease/healthequity/social-determinants-of-health-and-chronic-disease.html> (last visited Dec. 9, 2022).

² See *About UHP*, <https://urbanhp.org/about/> (last visited Dec. 9, 2022).

³ See *CDC-RFA-DP22-2210, Closing the Gap with Social Determinants of Health Accelerator Plans*, VIEW GRANT OPPORTUNITY, <https://www.grants.gov/web/grants/view-opportunity.html?oppId=338618> (last visited Dec. 9, 2022).

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 a County employee “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 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.*; INQ 13-236. 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 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, a County employee in the Office of Elevator Safety may concurrently serve as a voluntary, non-paid Board Member on the Board of Directors of the National Association of Elevator Safety Authorities International (“NAESAI”) because his participation as an NAESAI Board Member is not outside employment as that term is used in the County Ethics Code. *See* INQ 13-236. Nevertheless, the County employee serving on the NAESAI Board of Directors should recuse himself from any matter that might conflict with his County duties, such as if a complaint against a County employee were to come before the NAESAI Board of Directors. *See id.*

Here, insofar as your anticipated participation on the Miami LGBTQIA+SDoH Plan’s Leadership Team will occur as an extension of your County duties as a Community Advocacy Program Officer 1 for the BCC, or as the Program Director for the County LGBTQ Advisory Board, the County Ethics Code Section 2.11-1(j) would not apply because your involvement in the Leadership Team would not be outside employment. Rather, if your participation on the Leadership Team will occur in your County role and as a part of your County duties, then you should seek guidance from your immediate supervisor and/or the County’s LGBTQ Advisory Board regarding whether you may participate in the Miami LGBTQIA+SDoH Plan’s Leadership Team.

However, insofar as your anticipated participation on the Miami LGBTQIA+SDoH Plan’s Leadership Team will occur outside of your County employment, your participation on the Miami LGBTQIA+SDoH Plan’s Leadership Team is most akin to voluntary service as a non-voting member of a board or committee for a nonprofit. While the Miami LGBTQIA+SDoH Plan is a public-private partnership between the City of Miami and UHP, it is UHP – a not-for-profit entity –

that has been tasked as the implementing partner agency. Furthermore, while the Leadership Team’s purpose is to refine and ensure uniform implementation of the Work Plan for the Miami LGBTQIA+SDoH Plan, the Leadership Team does not have authority to make any binding decisions regarding the Miami LGBTQIA+SDoH Plan; rather, the City of Miami and UHP oversee the actions of the Leadership Team and UHP is ultimately charged with implementation of the Miami LGBTQIA+SDoH Plan. Furthermore, per the Miami LGBTQIA+SDoH Plan’s Program Manger, the Leadership Team will not be a City of Miami Advisory Board, and that membership on the Leadership Team does not involve a City appointment process, is wholly voluntary, and is uncompensated. Accordingly, in light of all these facts, your anticipated participation in the Miami LGBTQIA+SDoH Plan’s Leadership Team is most akin to voluntary service with a nonprofit entity. *See* RQO 17-03; INQ 13-236.

As such, applying the multi-factor test to determine whether nonprofit service is considered outside employment, the factors here weigh against concluding that your anticipated service on the Leadership Team is outside employment because: (a) you did not found the Miami LGBTQIA+SDoH Plan; (b) you will not serve as its Executive Director or President; (c) you will not be responsible for day-to-day operation or implementation of the Miami LGBTQIA+SDoH Plan; (d) your service on the Leadership Team will not be compensated; and (e) per the project narrative, involvement in the Leadership Team includes only regular monthly meetings from January 2023 until September 2023.

Accordingly, considering all the of facts and circumstances discussed above, your anticipated participation in the Miami LGBTQIA+SDoH Plan’s Leadership Team, insofar as it will be outside of your County duties, would not be considered outside employment and, as such, **County Ethics Code Section 2-11.1(j) would not restrict your ability to concurrently participate in the Miami LGBTQIA+SDoH Plan’s Leadership Team.**

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

The County Ethics Code provides that no County employee, “shall appear before any County board or agency 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)(1). The County Ethics Code further provides that no County employee shall, “receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person.” *Id.*

Here, you are prohibited from appearing and/or lobbying before the BCC and/or the County LGBTQ Advisory Board on behalf of the Miami LGBTQIA+SDoH Plan. *See* County Ethics Code § 2-11.1(m)(1). Furthermore, insofar as the Miami LGBTQIA+SDoH Plan may have any matter pending before the BCC or the County LGBTQ Advisory Board, you would be prohibited from accepting any compensation from the Miami LGBTQIA+SDoH Plan, whether directly or indirectly, for services rendered to it in connection with that matter. *See id.*

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

The County Ethics Code provides that no County employee, “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 Community Advocacy Program Officer 1 for the BCC or as Program Director for the County LGBTQ Advisory Board to secure any special privileges or exemptions for yourself and/or for the Miami LGBTQIA+SDoH Plan. 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 the Miami LGBTQIA+SDoH Plan in any funding application or other County decision-making situation that might benefit the Miami LGBTQIA+SDoH Plan that may come before the BCC or the County LGBTQ Advisory Board.

Opinion

Based on the facts presented here and discussed above, the County Ethics Code does not prohibit you from participating in the Miami LGBTQIA+SDoH Plan’s Leadership Team because, insofar as your participation in the Leadership Team will occur outside of your County duties, it is not considered outside employment. See County Ethics Code § 2-11.1(j); RQO 17-03; INQ 13-236.

However, with regard to your anticipated participation on the Miami LGBTQIA+SDoH Plan’s Leadership Team, you are required to abide by the restrictions discussed above. See County Ethics Code §§ 2.11-1(g), (m)(2).

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.