


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: Shirlyon McWhorter
Board Member
Domestic Violence Oversight Board

FROM: Jose J. Arrojo
Executive Director
Commission on Ethics 

SUBJECT: INQ 2022-21, Board Member Contracting with the County & Outside Employment (Mom & Pop Grant), Sections 2-11.1 (c) and (j) of the County Ethics Code

DATE: February 18, 2022

CC: All COE Legal Staff; Office of the Miami-Dade Commissioner Oliver G. Gilbert, III, District 1; Victoria Goss, Training Coordinator, Neighbors and Neighbors Association

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding County board members applying for Mom-and-Pop Grants which are funded by Miami-Dade County.

Facts:

You are a member of the Miami-Dade County Domestic Violence Oversight Board (DVOB). The DVOB, which is part of the Office of Community Advocacy, was established to serve in an advisory capacity to the Board of County Commissioners (BCC) with regards to issues affecting or relating to domestic violence. More specifically, the DVOB is tasked with developing and submitting to the BCC a comprehensive plan for the use of the portion of the food and beverage sales tax proceeds dedicated to the provision of domestic violence centers.

The DVOB is comprised of fifteen (15) members. These members are covered persons under the County Ethics Code. *See* Sections 2-11.1(a) and (b)(4) ¹ The Ethics Commission has exclusive interpretation jurisdiction regarding the Ethics Code and its application to covered persons and entities. It shares enforcement jurisdiction with the State Attorney who may prosecute knowing violations of the Ethics Code as second-degree misdemeanors. ²

You are also an attorney and the principal in McWhorter Law, PLLC. Your offices are physically located in Miami Gardens, Florida, within the boundaries of District 1 of the BCC. Your practice focuses on providing legal services related to estate planning, wills, probate, and trusts. As part of your practice, you provide estate planning legal services to persons who may have difficulty securing the financial resources to retain private counsel.

Mom-and-Pop Grants are funded by Miami-Dade County. Neighbors and Neighbors Association, a not-for-profit organization, administers and makes recommendations regarding the Mom-and-Pop Grant applications; funds are distributed by the Commission offices of the 13 County Districts to businesses that meet the requirements of the grants.

McWhorter Law, PLCC is applying for a Mom and Pop Grant funded through Miami-Dade Commissioner Oliver G. Gilbert, III's District 1 Office.

Issue:

Whether the County Ethics Code would prevent your privately-owned company, McWhorter Law, PLCC, from accepting a Mom & Pop Grant.

Discussion and Opinion

Section 2-11.1 (c) (3) of the County Ethics Code permits advisory personnel from contracting with the County, individually or through a firm, as long as the contract is not with any agency or department that is subject to the regulation, oversight, management, policy setting or quasi-judicial authority of the board on which the person is a member.

¹ The County Ethics Code shall be applicable to all County personnel as defined herein and shall also constitute the minimum standard of ethical conduct and behavior for all advisory personnel in the County. The term “advisory personnel” shall refer to the members of those County advisory board and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners.

² See generally Sections 2-1072, 2-1074 and 2-11.1(cc), Miami Dade County Code (Ethics Commission Enabling Ordinance and Ethics Code penalty provisions)

Because your grant award and contracting will not involve the DVOB or the Office of Community Advocacy, then you are not prohibited from applying for a Mom-and-Pop grant. However, your inquiry does involve several other sections of the County Ethics Code which are analyzed below:

A. Outside Employment

McWhorter Law, PLCC, your privately-owned business, constitutes outside employment. The County Ethics Code prohibits County board members from engaging in conflicting outside employment. Conflicting employment is sometimes created when a County board member comes in contact with the same or similar people or entities in both his outside employment and in his County board service or when he or she uses the same or similar resources in his outside employment as he uses in his County role.

There does not appear to be a conflict between your service on the DVOB, where you and your colleagues advise the BCC on issues relating to domestic violence, and your private legal practice where you focus on estate planning, wills, probate, and trusts. *See* County Ethics Code § 2-11.1 (j).

B. Mom and Pop Grant

Your company may accept Mom-and-Pop Grant funding as long as the DVOB, the board on which you serve, or the Office of Community Advocacy, do not become involved in any way in processing or administering the grant. This includes the condition that you may not participate in determining or awarding the grant. Additionally, none of your board responsibilities may require you to be involved in the grant in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1 (c) and (n).

C. Lobbying

While the DVOB and the Office of Community Advocacy are not at this time involved in the Mom-and-Pop grant program, you are nevertheless reminded that as a County advisory board member and a lawyer, you may not represent, directly or indirectly, a third party before the DVOB or the Office of Community Advocacy. Also, you may not appear as counsel in court or before an administrative panel on behalf of a third party who seeks relief from the DVOB or the Office of Community Advocacy. *See* County Ethics Code §2-11.1 (m)(2).

D. Exploitation of Official Position

Finally, the County Ethics Code prohibits County board members from exploitation of their official position. This means that you may not use your County position to secure special privileges or exemptions with respect to participating in any grant

program to which your company is applying. Also, you are prohibited from using any County resources in relation to your legal practice. *See* County Ethics Code § 2-11.1(g).

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.

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.