


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Josenrique Cueto
Deputy Director
Department of Regulatory and Economic Resources

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: INQ 2022-27, Section 2-11.1 (j), Conflicting Employment Prohibited

DATE: February 28, 2022

CC: COE Legal Staff
RER Department Director

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting our guidance regarding the application of the County Ethics Code to your prospective service on the Miami-Dade Expressway Authority Board.

Issue:

Whether the Deputy Director of the Department of Regulatory and Economic Resources may serve in an appointed position on the Miami-Dade Expressway Authority Board.

Facts:

You have been nominated by the Chairperson of the Board of County Commissioners to serve on the board of the Miami-Dade Expressway Authority. You will not be compensated for this service.

You are the Deputy Director of the Department of Regulatory and Economic Resources (RER). In this position, you oversee the following divisions:

- Construction, Permitting and Building Code Division
- Code Compliance Division
- Division of Environmental Resources Management (DERM)
- Planning and Development Services Divisions
- Division of Boards and Code Administration
- Office of and the Office of Consumer Protection

You are not directly involved in routine licensing, development reviews, permitting approvals, or code enforcement. Rather, the divisions under your supervision are staffed by over 900 employees who issue thousands of permits and licenses annually and enforce multiple code chapters.

Your direct involvement on specific projects more often comes in the form of receipt of referrals/complaints from the offices of elected officials passing along constituent concerns; engagement from your immediate divisional staff in cases of larger development projects, high profile projects, and other projects that may present unusual complexities; or appeals from individuals, companies, or project representatives regarding the decisions of my subordinate staff.

Your spouse, Ms. Marisela Aranguiz, is the Deputy Director of Capital Improvements at the Miami-Dade Water and Sewer Department (WASD). In that role, she is responsible for overseeing the execution of the WASD's capital projects (planning, design, and construction). Although your spouse is not personally applying for permits with any of the divisions which you oversee at RER, her subordinates or consultants working at the direction of her subordinates are.

The Miami-Dade Expressway Authority (MDX) is an agency of the State of Florida created pursuant to the Florida Expressway Authority Act, at Chapter 348, Florida Statutes. MDX is an independent agency; it is not a County Department.

MDX has jurisdiction over limited segments of highway within Miami-Dade County. These include the 836, 874, 878, and segments of the 112, and the 924. MDX seeks to control toll revenues collected on the five expressways, and to ensure that the toll revenue collected is reinvested to improve transportation. MDX receives no County funds, and no Miami-Dade staff are assigned to the agency.

As expressly acknowledged in Sec. 2 of Ordinance No. 94-215, adopted by the Board of County Commissioners of Miami-Dade County on December 13, 1994, the Florida Code of Ethics for Public Officers and Employees, Chapter 112, Part 3, Florida Statutes (the "Florida Ethics Code"), as the same may be amended from time to time applies to the members of the governing board, employees, and consultants of the Miami-Dade County Expressway Authority.¹

¹ In 2019 the Florida Legislature created the Greater Miami Expressway Authority (GMX), seeking to usurp MDX's property interests in the five local expressways. In response, in 2021, the Miami-Dade Board of County Commissioners (BCC) exercised its Home Rule authority and passed a county ordinance nullifying certain unconstitutional sections of the Florida Statutes adopted under the 2019 bill. The ordinance included the elimination of GMX within the County's jurisdiction and transferring back to MDX all rights, benefits, and revenue under the 1996 Transfer Agreement between the Florida Department of Transportation (FDOT) and MDX. The dispute between MDX and GMX is currently the subject of litigation. This opinion takes no position on that litigation which is clearly not within the jurisdiction of the Miami-Dade County Commission on Ethics.

Discussion:

Serving as a member of the Board of Directors of a nonprofit or other governmental board on a compensated or uncompensated basis, if you are involved in aspects relating to the administration of that entity, may constitute outside employment. (*See generally* RQO 17-03)

In this instance, your engagement as a member of the MDX board, does not constitute prohibited conflicting employment because of the absence of any administrative duties, because it is a public entity board, and because your service will occur outside of your County hours and would be performed using your personal and MDX resources. (*See generally* INQ 19-60)

However, 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 the Deputy Director for one of the largest of the County's departments and supervise over 900 County employees.

Thus, in abundance of caution, because of the public and prominent nature of your position as the Deputy Director of RER, this ethics guidance will analyze your prospective appointment to the MDX board as if it constituted outside employment. (*See* INQ 2021-01; INQ 2021-70; INQ 2021-89)

As a preliminary matter, you are encouraged to obtain approval in writing from the RER Director before you engage in with MDX. This is an administrative process, and the Ethics Commission has no jurisdiction as regards the approval process. ²

Section 2-11.1(j) of the Ethics Code prohibits County employees from engaging in certain activities that would impair their independence of judgment in the performance of their public duties to the County. ³

² *See generally* Sec. 2-11, Miami-Dade Code (No full-time County employee shall accept outside employment, either incidental, occasional or otherwise, where County time, equipment or material is to be used or where such employment or any part thereof is to be performed on County time, and when permitted, the employee may accept incidental or occasional outside employment so long as such employment is not contrary, detrimental or adverse to the interest of the County or any of its departments, if required approval is obtained in writing by the employee's department head. An employee who violates this provision may be subject to dismissal by his department head.)

³ *See also* Sec. 112.313 (7)(a), Florida Statutes (No public employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an employee. Nor shall an employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.)

MDX is responsible for the above-described state tollways located in Miami-Dade County, whereas RER is responsible for local county roads. As such, the only potential overlap that may occur regarding matters that you are entrusted with in your capacity as Deputy Director of RER and your prospective service as an MDX board member, would involve scenarios where an MDX project may impact an abutting County road that may feed into a MDX tollway or when an expressway project may have an environmental impact.⁴

Consequently, from the facts that you have relayed, it would appear that there would not be a *regular* overlap between your position as the RER Deputy Director and the proposed position on the MDX board.

However, you are cautioned against your involvement as the RER Deputy Director, directly or indirectly, in any matter that involves an MDX project impacting an abutting County road or when an expressway project may have an environmental impact such that DERM is involved.

You have also previously agreed, because of your spouse's employment as a senior government executive in WASD, in an abundance of caution, to recuse yourself from any WASD capital projects that involve RER permitting. Instead, you will instruct your immediate staff to exclude you from any approvals involving WASD capital projects. Should there be a need for any involvement that might have ordinarily occurred at your level, staff will be instructed to proceed directly to Lourdes Gomez, the RER Department Director.⁵

Now, in *both* of these categories of projects you should instruct your subordinate staff that should there be a need for any involvement that might have ordinarily occurred at your level, they should instead proceed directly to Lourdes Gomez, the RER Department Director.

⁴ The envisioned "Kendall Parkway" is a north-south multimodal transportation corridor west of SW 167th Avenue from the current terminus of SR 836 at NW 12th Street to SW 136th Street. You specifically identified this MDX project as one where there would likely be an overlap between your RER responsibilities over DERM and its role regarding the environmental impact of the parkway project.

⁵ See INQ 17- 131(Approval of a sub-contractor when the Project Manager's son has a connection with said firm, could be perceived as an exploitation); INQ 12-180 (The Mayor, who has great discretion over County contracts, should refrain from becoming involved in the award of a contract to a firm where his daughter-in-law is an associate and should delegate his authority to another County administrator and remove himself from the decision-making chain); INQ 16- 76 (The Deputy Director of RER, whose cousin was involved in business transactions involving clients coming before RER divisions, should exclude herself from any decisions where her cousin is involved and should instruct personnel to go directly to the Department Director, thus providing a separation between her County role and any prospective activity that her cousin may be involved with in connection with RER)

There are other provisions of the County Ethics Code that are always implicated when a County employee engages in outside professional activities:

You should refrain from engaging in activities that relate in any way to MDX during your regular County workday and you should not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with your MDX board service. *See generally* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.

Also, you may not use any confidential or proprietary information acquired because of your County position to benefit MDX. More generally, you may not exploit your position as the Deputy Director of RER to secure special privileges or exemptions for MDX. *See* County Ethics Code Sections 2-11.1(h) and (g) of the County Ethics Code.

Finally, you may not represent MDX before any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173.

Opinion:

Under the details provided to this office concerning your current position as the RER Deputy Director and your described prospective appointment to the MDX board, you are not prohibited by the County Ethics Code from accepting the appointment.

You are nevertheless subject to the limitations and recusals detailed in this opinion. Because you are already recusing yourself on matters relating to WASD projects requiring RER permitting and will be additionally recusing yourself on matters involving MDX, it is recommended that you seek additional ethics guidance if you find that your participation on the MDX board, combined with you and your spouse's employment as County government executive, begins to create repeated and ongoing conflicts that interfere with your County duties.

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. While there are references to the State of Florida's statutory standards of conduct for public employees, and these laws will govern your actions as a member of the MDX board, this opinion does not interpret state law. 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.