



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: Humberto Aubi
Fire Lieutenant
Miami-Dade Fire Rescue Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-40 Conflicting /Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: March 11, 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 a Fire Lieutenant with Miami-Dade Fire Rescue (MDFR). You would like to engage in outside employment as the trustee of the Humberto Aubi Trust and Isabel Aubi Trust. You would also like to contract with the County as a Section 8 landlord.

You are employed with the County as a Fire Lieutenant. You handle the day-to-day operations of a MDFR operations unit, which includes responding to calls whether medical or fire in nature, and ensuring operations are run per department policy and in the best interest of the residents of Miami-Dade County.

You are also the trustee and beneficiary of the Humberto Aubi Trust and Isabel Aubi Trust (Trusts). The Trusts are comprised of various real estate properties and the associated bank accounts. As the trustee, you manage trust assets and properties including interacting with tenants/potential tenants and vendors such as Florida Power and Light, Miami-Dade Water and Sewer, various contractors, etc.

In your County position, you do not have any involvement, authority, or oversight over the Trusts' contracts/agreements with the County or PCHD. You further advise will not be required to come into contact with the same people, clients, or entities in both positions. You will not utilize the same or similar resources in your work for the Trusts. You also do not work in a position that requires you to recruit vendors, contractors, bidders, or members of the public that could use your

outside employment services. Lastly, your work for the Trusts would be performed outside of your County hours.

You also advise that one of the Trusts' rental properties contracts with Miami-Dade County, Housing and Community Development (PCHD) as a Section 8 landlord. Notably, you obtained an opinion from the Ethics Commission on January 23, 2019, which indicated that no ethics conflict existed between your employment at MDRF and your intent to contract with PCHD as a Section 8 landlord because neither you nor any of your immediate family is employed by PCHD. *See* SEC 19-01. As there has been no change in the circumstances of that opinion, the analysis and opinion provided remains unchanged and in effect.

Analysis and Opinion:

Your inquiry involves several sections of the Miami-Dade County Ethics Code which are analyzed below:

A. Outside Employment

Sections 2-11.1(j) and (k) of the Miami-Dade 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 Ethics Commission considers three or more properties held in a trust to constitute outside employment if the employee has ownership rights over the properties and/or if the employee is actively involved in the day-to-day management of such properties. *See* INQ 14-21. Consequently, your role as both the trustee and beneficiary of these Trusts constitutes outside employment.

Accordingly, you are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

It also noted that the County's Administrative Order No. 7-1 gives a County department director the ultimate discretion to deny outside employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 12-07; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

The Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment that is likely to create conflicts of interest between the employee's County responsibilities and their outside job duties. This is reinforced in the County's Administrative Order 7-1 which 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."

After reviewing the facts presented here, we find that your outside employment of managing the Trusts is not likely to cause conflicts of interest between your private interest and your public duties. This is because there is no overlap between your public duties as a Fire Lieutenant and your outside employment. Specifically, you will not be assisting the same clients, you will not use the same resources, and the work would be performed outside of your County hours.

Nevertheless, you must abide by certain limitations and cautions outlined below to avoid a conflict:

- 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 the Trusts or its beneficiaries. *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.

B. Contracting with the County

Once you have been granted permission to engage in outside employment by your department director, you may enter into a County contract through the Trusts, provided that the contract does not interfere with the full and faithful discharge of your duties to the County. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This includes the condition that you may not participate in determining the contract requirements or in awarding the contract. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract. *See* Sections 2-11.1(c) and (n), Miami-Dade County Ethics Code. Consequently, the Trusts **may not** enter contracts with Miami-Dade Fire Rescue.

C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about any contract the Trusts are seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code.

D. Exploitation of Official Position

Finally, the Miami-Dade County Ethics Code prohibits County employees 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 any County contract to which the Trusts are applying. *See* Section 2-11.1(g), 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.