



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Sandra L. Jackson
Human Resources Manager
Miami-Dade County Aviation Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-44, Section 2-11.1(k), Prohibition on outside employment.

DATE: March 21, 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 ethics issues arising from your position as Treasurer for a nonprofit organization.

Facts

An inquiry has been submitted concerning whether your volunteer activities as Treasurer for Wish Foundation, Inc., a not-for-profit entity, constitute outside employment under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”).

You are employed by the Miami-Dade County Aviation Department (“MDAD”) as a Human Resources Manager. Your responsibilities primarily include managing County and departmental trainings, wellness programs, the division budget, internships, and outreach.

Wish Foundation, Inc., is a Florida not for profit corporation. It is the charitable arm for the Alpha Kappa Alpha Sorority, Inc. – Gamma Zeta Omega Chapter, and provides activities for women and children such as Life Skills Workshops, the Dr. Martin Luther King, Jr. Youth Symposium,

scholarships, and other mentoring and group activities.¹ You advised that Wish Foundation, Inc., does not contract with Miami-Dade County. A record search also indicates that Wish Foundation, Inc., is not a County vendor.

You advised that you volunteer as the Treasurer for Wish Foundation, Inc. As Treasurer for Wish Foundation Inc., you are responsible for managing the finances for the organization, presenting monthly finance reports, and ensuring compliance with State regulations (e.g., SunBiz registration, Florida Agriculture and Consumer Services reporting, and maintaining the Florida Consumer’s Certificate of Exemption). You advised that you typically do not spend an extensive amount of time per week on this work, meaning significantly less than twenty hours. You further advised that you do not collect a salary or any other type of monetary compensation for your work.

Issue

Whether the County Ethics Code requires that you annually report as outside employment your work as the Treasurer for Wish Foundation, Inc.

Analysis

The County Ethics Code provides that, “[a]ll full-time County and municipal employees engaged in any outside employment . . . shall file, under oath, an annual report indicating the source of the outside employment . . .” County Ethics Code § 2-11.1(k)(2). 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.* 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.*

The Commission on Ethics has opined that County employees who establish a nonprofit and serve as its Executive Director, President, or Manager, whether compensated or not, are engaged in outside employment. *See* RQO 17-03; *see also* INQ 13-08 (a County employee who served as the executive director of an after-school tutoring and basketball instruction nonprofit organization was engaged in outside employment because the type of services that he provided are “*customarily eligible to be compensated.*” [emphasis in original]). Similarly, a County employee who founded a nonprofit for victims of domestic violence and human trafficking who spent in excess of twenty hours per week administering the day-to-day functioning of the nonprofit was engaged in outside employment. *See* INQ 17-107.

¹ *See* W.I.S.H. Foundation, Inc., ALPHA KAPPA ALPHA SORORITY, INCORPORATED - GAMMA ZETA OMEGA CHAPTER (Mar. 17, 2022), <https://www.gammazetaomega.org/general-4>.

However, in contrast to these opinions, we concluded that the services provided as Treasurer for the West Kendall Toastmaster Club #8370 by a County employee did not constitute outside employment. *See* INQ 17-108. Similarly, a County employee serving as Treasurer for the Board of Directors of the Greater Miami Service Corps (“GMSC”) was not engaged in outside employment because he was not actively involved in the administration of GMSC. *See* INQ 21-100.

Here, based on the facts presented and discussed above, it does not appear that your service as Treasurer for Wish Foundation, Inc., constitutes outside employment because: (a) you did not found Wish Foundation, Inc.; (b) you serve as Wish Foundation, Inc.’s Treasurer, not its Executive Director or President; (c) you are not responsible for Wish Foundation, Inc.’s day-to-day functioning or activities; (d) you do not receive any form of compensation for your service as Treasurer to the organization; and, (e) you do not have significant time commitments as part of your service as the organization’s Treasurer. *See* RQO 17-03; INQ 21-100; INQ17-108.

Opinion

Based on the facts presented here and discussed above, you are not engaged in outside employment, as that term is used in the County Ethics Code, by serving as Treasurer for Wish Foundation Inc., and you do not have to annually report your activities as outside employment as required by Section 2-11.1(k)(2) of the County Ethics Code.²

Nevertheless, several sections of the County Ethics Code are worth review:

- You may not appear before any County board or agency to make a presentation on behalf of or seek any benefit for Wish Foundation, Inc. *See* County Ethics Code § 2-11.1(m)(1).
- You may not exploit your County position to secure special privileges or exemptions for yourself and/or Wish Foundation, Inc. *See* County Ethics Code § 2-11.1(g).
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of Wish Foundation, Inc. *See* County Ethics Code § 2-11.1(h).

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.

² Because your service as Treasurer for Wish Foundation, Inc., is not outside employment, you do not have to seek approval from your supervisor on a yearly basis to engage in this activity. *See* Miami-Dade Code § 2-11; *see also* RQO 17-03; INQ 21-100. Likewise, your service as Treasurer would not raise any issue concerning the prohibition against conflicting employment under County Ethics Code § 2-11.1(j).

Other conflicts may apply based on directives from MDAD or under state law. Questions regarding possible conflicts based on MDAD directives should be directed to MDAD or the Mayor'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.