



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: Keith Carswell
Senior Advisor to City Manager for Economic Development and Venture Miami
City of Miami

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-48, Section 2-11.1(i), Financial disclosure, Section 2-11.1(k),
Prohibition on outside employment, and Section 2-11.1(l), Prohibited investments.

DATE: March 22, 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 prospective investments.

Facts

An inquiry has been submitted concerning whether your prospective investments in the financial technology sector will constitute outside employment, and whether any other conflicts of interest may arise under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”).

You are employed by the City of Miami as a Senior Advisor to the City Manager for Economic Development and Venture Miami. Your position is an executive level position, and you report directly to the City Manager/Chief Administrator. You are responsible for administrative oversight and management of branding the City of Miami as a regional technology and innovation hub and overseeing the Office of Venture Miami. You describe the Office of Venture Miami as a City office that provides support for technology organizations and companies by encouraging relocation to Miami, connecting new-to-market entities with the existing technology ecosystem, connecting talent to jobs, and promoting diversity.

You are considering investments in online-only financial technology (“fintech”) companies known as neobanks. A neobank is a fintech company that offers applications, software, and other technologies to streamline mobile and online banking, but is distinguishable from an online bank

because online banks typically have a bank charter and provide a broader range of financial services, such as loans.¹

You have advised that none of the neobanks in which you are considering investing do business with the City of Miami, nor will any actions taken by you or the City directly or indirectly impact the neobanks in which you are considering investing. You have further advised that you will not obtain a controlling interest in any of the neobanks in which you are considering investing, and that you will not be paid a salary or otherwise perform any work for said neobanks; rather, you hope to get an equity share of the neobanks' profits and/or dividends from your investment.

Issue

Whether there is a prohibited conflict of interest that would prevent you from investing in one or more neobanks.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Prohibition on Outside Employment

The County Ethics Code provides that all full-time municipal employees² “engaged in any outside employment for any person, corporation or entity other than . . . the respective municipality . . . shall file, under oath, an annual report indicating the source of the outside employment” County Ethics Code § 2-11.1(k)(2). However, the Commission on Ethics has concluded that if a “government employee is not employed by the private corporation and/or is not eligible to receive a salary from the corporation, she is not engaged in outside employment and does not need to file outside employment forms.” RQO 08-36. For example, a fire inspector who created a corporation in which he held a sixteen percent share, but for which he did not perform any services and from which he did not collect a salary, was not engaged in outside employment. *See* RQO 08-36. Similarly, a County General Services Administration employee who was a passive investor in a company and nominally a corporate vice-president, but who took no active role in the company’s management or operation and did not receive a salary, was not engaged in outside employment. *See* INQ 09-109.

¹ Stephanie Walden & Mitch Strohm, *What is a Neobank?*, Forbes Advisor (June 24, 2021), <https://www.forbes.com/advisor/banking/what-is-a-neobank/>.

² “References . . . to County personnel shall . . . be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to.” County Ethics Code § 2-11.1(a).

Here, you have advised that you are considering investing in one or more neobanks, but that you will not collect a salary and you will not perform any services for these companies that would be similar to the services provided by an employee. Accordingly, because you will be acting solely as an investor, you will not need to file an annual report pursuant to Section 2-11.1(k)(2) listing the neobank(s) in which you invest as outside employers. *See* RQO 08-36; INQ 09-109.

B. Financial Disclosure

The County Ethics Code provides that certain municipal personnel shall be required to file a financial disclosure by noon of July 1st of each year:

(a) a copy of that person's or firm's current federal income tax return; or (b) a current certified financial statement on a form of the type approved for use by State or national banks in Florida listing all assets and liabilities having a value in excess of one thousand dollars (\$1,000.00) and a short description of each; or (c) [a]n itemized source of income statement, under oath and on a form approved by the County for said purpose.

County Ethics Code 2-11.1(i)(1). The municipal employees included in this disclosure provision include the City Manager, Assistant City Managers, Special Assistants to the City Manager, and heads or directors of municipal departments and their assistant or deputy department heads. *See* County Ethics Code 2-11.1(i)(2).³

Here, you may be required to file an annual financial disclosure in light of your executive-level position with the City of Miami as a Senior Advisor to the City Manager for Economic Development and Venture Miami. *See* County Ethics Code 2-11.1(i)(2). The Commission on Ethics has construed the financial disclosure provision broadly "to implement, rather than defeat, the legislative intent . . . to enhance transparency in government." *See* RQO 13-01. Additionally, please be advised that the City of Miami may enact internal policies that are in addition to and more restrictive than the County Ethics Code that may require you to submit a financial disclosure. *See* RQO 08-36; INQ 16-79.

C. Prohibited Investments

The County Ethics Code prohibits a municipal employee from having a personal investment in any enterprise, either himself or through an immediate family member,

³ Furthermore, regardless of title, any County or municipal employee who has been delegated the authority to approve a single expense over \$35,000.00 is required by Florida law to file State Form 1. *See* Fla. Stat. § 112.3145(1)(a)(3). However, you indicated that you have not been delegated the authority to approve such expenses.

which creates a substantial conflict between his or her private interests and the public interest. *See* County Ethics Code § 2-11.1(l). For example, a prospective Assistant Director for the Miami-Dade Department of Solid Waste Management who owned and operated a private company certified as a County vendor avoided any potential conflict of interest due to prohibited investments by agreeing to divest himself of any ownership interest in his company before starting his County employment. *See* INQ 17-111. Accordingly, if any neobank in which you invest were to begin any business relationship with the City of Miami, you would likely be required to immediately divest yourself from your investments in that neobank due to your executive-level position in the City and your responsibilities focused on a policy area that is highly likely to impact any neobank doing business with the City of Miami. *See* INQ 17-111.

D. Exploitation of Official Position Prohibited

The County Ethics Code prohibits municipal employees from exploiting their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your municipal position to secure special privileges or exemptions with respect to your investments in any neobanks, and that you may not use your municipal position to aid said neobanks with regard to any interactions they may have with the City of Miami. *Id.*; *see also* INQ 21-21.

E. Prohibition on Use of Confidential Information

You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your City employment to derive a personal benefit, or to derive any benefit for any neobank in which you choose to invest and those neobanks' clients. *See* County Ethics Code § 2-11.1(h); INQ 21-21; INQ 17-111.

F. Certain Appearances and Payment Prohibited

Finally, you may not lobby the City. In this case, while you have indicated that none of the neobanks in which you are considering investing do business with the City of Miami; we nevertheless caution you that you may not contact anyone within the City in an attempt to influence a decision about any action related to any neobank in which you invest. *See* County Ethics Code § 2-11.1(m)(1); INQ 21-21; INQ 17-111.

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest created by investing in one or more neobanks. However, you must adhere to the limitations discussed above regarding those investments.

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 internal City of Miami policies or directives, or under state law. Questions regarding possible conflicts based on City of Miami policies or directives should be directed to your immediate supervisor or the Office of the City Attorney. 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.