



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Michelle Johnson
Faith and Community Leadership Liaison
Mayor's Office

FROM: Jose J. Arrojo
Executive Director

SUBJECT: INQ 2022-58, Section 2-11.1 (j), Conflicting Employment, Section 2-11.1(e), Gifts

DATE: April 1, 2022

CC: COE Legal Staff

Thank you contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to your service as a voluntary member of a non-for-profit corporate board.

Facts:

You serve as the County Mayor's Faith and Community Leadership Liaison. In this capacity you are engaged with many community-based organizations (CBO's) and partner with them on joint initiatives with the County.

Concerned African Women, Inc. (CAW) is an active Florida nonprofit entity. CAW publicly describes its mission as the unification of persons of African descent through the artistic, educational, and social needs of children and families. It provides a continuum of care centered on after school and summer programming that includes artistic exploration and academic enhancement with a primary focus on literacy, technology training for both youth and adults, family empowerment and family strengthening, life skills development, opportunities for cultural engagement, behavioral modification incentives, arts, and recreational sports activities.

CAW is part of the greater CBO community, and it is County contractor inasmuch as it receives County grant awards.

Prior to your employment with the County, you were employed by CAW for approximately 13 years, from on or about 2008 until 2021. Your last position with CAW was as Director of Strategic Partnerships.

As part of your current official duties, you may intersect with CAW staff, clients, and programs but only as part of your work with the greater CBO community.

You are considering serving as a voluntary, unpaid director of CAW. In this capacity, you will not have any administrative responsibilities as regards that entity, but you may be engaged in grant or donation solicitations.

You advise that your immediate County supervisor is aware of your prospective work with the aforementioned nonprofit and that he approves or will approve of your volunteer service with the entity as long as it is consistent with the requirements imposed on County officials and employees under the County Ethics Code.

Issue Presented:

Whether your service as a volunteer member of a non-for-profit entity, is permissible under Section 2-11.1(j) of the County Ethics Code relating to conflicting outside employment.

Whether you may solicit gifts in the form of grants or donations on behalf of a nonprofit entity under Section 2-11.1(e) of the County Ethics Code relating to gifts.

Discussion and Opinion:

The County's Conflict of Interest and Code of Ethics provides the *minimum standard* of conduct for public officials. 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 a senior member of the Mayor's staff.

Voluntary service on the non-for-profit board, serving as a board member of a nonprofit 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)¹

¹ In abundance of caution, because of the public and prominent nature of your position as the Mayor's Faith and Community Leadership Liaison, this ethics guidance will in certain instances treat your voluntary board service with the non-profit, as if you may be involved in some respects relating to the administration of the entity, and the engagement constitutes outside employment. (*See* INQ 2021-70; INQ 2021-89)

Section 2-11.1(j) of the County Ethics Code prohibits County employees from engaging in outside employment that creates a conflict of interest between the public duties and his or her personal interests. (*See also* Miami-Dade Administrative Order 7-1)

Your uncompensated and voluntary engagement as a member of the board of the nonprofit, does not constitute prohibited conflicting employment because of the absence of any administrative duties; the charitable nature of the nonprofit; and because your service will occur outside of your County hours and would be performed using your personal and nonprofit resources. (*See generally* INQ 19-60)

Nevertheless, as regards the nonprofit's relationship with the County because it is a current and potentially future grant recipient, you should not be involved in the grant application, award, supervision, compliance, or enforcement of the grant award contract. (*See generally* INQ 16-48, 16-22, INQ 14-170, INQ 12-13, INQ 11-01, and INQ 10-201)

With respect to fundraising on behalf of nonprofit, the County Ethics Code prohibits County employees from soliciting any gifts in exchange for an official action. Miami-Dade Code Sec. 2-11.1(e)(3). This obviously means that you could not solicit or accept a gift on behalf of the nonprofits in exchange for any official action you take as a County employee.

However, outside of a prohibited *quid pro quo* scenario, solicitation of gifts on behalf of a nonprofit organization is not generally prohibited, particularly where an employee is not compensated by the entity. (*See generally* INQ 16-93) You should, however, avoid direct, targeted solicitations of County vendors and lobbyists on behalf of the nonprofit, even if the solicitation is not prohibited, in order to avoid situations where a County vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. (*See* INQ 16-275)

All of the standard prohibitions that apply to County employees engaged in outside employment would apply to your service with the nonprofit:

You may not use County time or resources in your engagement with CAW. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.

You may not, as a voluntary director of the nonprofit, engage in activities that relate in any way to CAW during your County work 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 computer programs, computer licenses purchased by the County, 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, or a benefit for the nonprofit or its clients and service recipients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.

You may not exploit your County position to secure special privileges or exemptions for yourself, the nonprofit, or its clients and service recipients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

You may should not represent the nonprofit before any County board or agency.

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 and Public Trust.

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.