



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: Harry Elden
Accountant II
Miami-Dade County Port of Miami (Seaport)

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-76 Conflicting /Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: May 4, 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 the non-profit Ballet Etudes of South Florida, Inc.

Facts: You are employed as an Accountant II for Miami-Dade County Port of Miami (Seaport). You inquire whether your volunteer activities as Treasurer for Ballet Etudes of South Florida, 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").

As an Account II, your duties include processing construction- related invoices, monitoring outstanding loans such as for capital development projects, assisting the Assistant Controller and other staff with budget/worksheet related inquiries, providing Chartfield values to project managers in Capital Development for new work orders, maintaining retainage balance and Chartfield values for construction projects, reporting cash position to the Assistant Controller on a weekly basis, attending weekly Capital Development routing meetings, acting as signatory for work orders, Capital Project Facts Sheets, and Statements of Need. You also assist the newly hired AO2 in construction grants regarding grant reimbursement and the Environmental Administrative Officer with accounting status of invoices that are eligible for reimbursement from advance deposits paid to Seaport by the US Army Corps of Engineers.

Ballet Etudes of South Florida, Inc. (Ballet Etudes), is a Florida not-for-profit corporation. Ballet Etudes was founded by Susana Prieto Elden, your daughter, in 1974, as South Florida's premier classical ballet company. Your daughter currently serves as Ballet Etudes' Executive Director. Its

mission is to preserve, promote, and present the ballet classics for the South Florida community. Ballet Etudes has received grants from the Miami-Dade County Department of Cultural Affairs to provide funding for performances and programs.

You advised that you volunteer as the Treasurer for Ballet Etudes. As Treasurer, you are responsible for occasional bookkeeping, account reconciliation, providing financial information to company accountants, and occasionally signing checks and grant applications. You advised that your work for Ballet Etudes is minimal and seasonal. 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.

In your County position, you do not have the authority to approve or disapprove any agreements or grants between the County and Ballet Etudes, and no involvement in the selection, oversight, or administration of any County contract with Ballet Etudes.

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

Analysis and Opinion:

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.

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 Ballet Etudes constitutes outside employment because: you did not found the organization; (b) you serve as Ballet Etudes' Treasurer, not its Executive Director or President; (c) you are not responsible for Ballet Etudes' 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 by serving as Treasurer for Ballet Etudes, 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.¹

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

- Ballet Etudes may enter into a contract/grant with the County, provided that the contract/grant does not interfere with the full and faithful discharge of your County duties. *See* County Ethics Code § 2-11.1(c)(2) and (d).
- You may not participate in determining the grant/contract requirements or in awarding the grant/contract. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the grant/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 grant/contract. *See* County Ethics Code § 2-11.1 (c) and (n). Consequently, Ballet Etudes **may not** enter contracts with Seaport.
- You may not appear before any County board or agency to make a presentation on behalf of or seek any benefit for Ballet Etudes. Additionally, you may not lobby the County, which means that you may not contact anyone within the County in an attempt to influence a decision about any contract or grant Ballet Etudes is seeking. *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 Ballet Etudes. *See* County Ethics Code § 2-11.1(g).

¹ 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).

- 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 Ballet Etudes. *See* County Ethics Code § 2-11.1(h).

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.

Bunker, Nolen A. (COE)

From: Felix, Loressa (COE)
Sent: Wednesday, May 4, 2022 3:00 PM
To: Bunker, Nolen A. (COE)
Subject: FW: Ethics Opinion for Harry R Elden E197964, INQ 2022-76

From: Felix, Loressa (COE)
Sent: Wednesday, May 4, 2022 2:57 PM
To: Elden, Harry (Seaport) <Harry.Elden@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Bunker, Nolen A. (COE) <Nolen.Bunker@miamidade.gov>; Akoni, Etta <Etta.Akoni@miamidade.gov>; Diaz, Onaivys (COE) <Onaivys.Diaz@miamidade.gov>
Subject: RE: Ethics Opinion for Harry R Elden E197964, INQ 2022-76

Good afternoon Mr. Elden,

Thank you for the clarification. This information does not alter the opinion analysis and the conclusion in the original opinion remains unchanged. However, I will attach this information to the original opinion.

Thank you and have a wonderful day!
Loressa

From: Elden, Harry (Seaport) <Harry.Elden@miamidade.gov>
Sent: Wednesday, May 4, 2022 10:20 AM
To: Felix, Loressa (COE) <Loressa.Felix@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Bunker, Nolen A. (COE) <Nolen.Bunker@miamidade.gov>; Akoni, Etta <Etta.Akoni@miamidade.gov>; Diaz, Onaivys (COE) <Onaivys.Diaz@miamidade.gov>
Subject: RE: Ethics Opinion for Harry R Elden E197964, INQ 2022-76

Good morning Ms. Felix,

Thank you for your prompt response. I appreciate your ruling, but there is one correction that has to be made. Susana Prieto Elden, founder and Artistic Director of Ballet Etudes of South Florida, Inc. is my spouse. She formed the corporation years before I joined the County. Susana is not an officer of the corporation or a Board Member. Our daughter is Dominique Elden Atchison, and she is the President. If you wish to re-issue your ruling, I will happily wait for it.

Thank you, and it was nice to speak with you.

Harry Elden
Harry Elden, Accountant II



Dante B. Fascell Port of Miami-Dade

Miami-Dade County Seaport Dept.

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"Delivering Excellence Every Day"

From: Felix, Loressa (COE) <Loressa.Felix@miamidade.gov>

Sent: Wednesday, May 4, 2022 8:55 AM

To: Elden, Harry (Seaport) <Harry.Elden@miamidade.gov>

Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Bunker, Nolen A. (COE) <Nolen.Bunker@miamidade.gov>; Akoni, Etta <Etta.Akoni@miamidade.gov>; Diaz, Onaivys (COE) <Onaivys.Diaz@miamidade.gov>

Subject: RE: Ethics Opinion for Harry R Elden E197964, INQ 2022-76

Good afternoon Mr. Elden,

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 the non-profit Ballet Etudes of South Florida, Inc. Please see attached INQ 2022-76 addressing the matter. Please do not hesitate to contact us if you have any questions or if we may be of further assistance.

Best regards,

Loressa M. Felix

Staff Attorney

Miami-Dade County Commission on Ethics and Public Trust

Overtown Transit Village North

701 Northwest 1st Court, 8th Floor

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From: Elden, Harry (Seaport) <Harry.Elden@miamidade.gov>

Sent: Wednesday, March 30, 2022 6:09 PM

To: Ethics (COE) <ethics@miamidade.gov>

Subject: Ethics Opinion for Harry R Elden E197964

Good afternoon,

I work at Seaport. I sit on the Board of a non-profit Ballet Etudes of South Florida, Inc. as the treasurer. I do bookkeeping and send the workpapers to the CPAs. My daughter is the President, and my wife is a non-board member as Artistic

Director. We receive grants from Miami-Dade Cultural Affairs. My adult daughter and I do not take a salary. The non-profit owes me money actually, but it is voluntary on my part. I work from home...
My wife had not taken a salary (W-2) but does from time to time (years) receive a small stipend as a 1099.
I may sign the grant application on occasion, but I can sign for checks.

May I have your opinion?

My cell is 305 409 762, and I work remotely now on Monday and Fridays.

Thank you,

Harry Elden, Accountant II



**Dante B. Fascell Port of Miami-Dade
Miami-Dade County Seaport Dept.**

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