



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: Daniel Rotenberg
Real Estate Division Director
Internal Services Department

Veronica Brown
Assistant Director
Internal Services Department

FROM: Etta Akoni, Staff Attorney
Miami Dade County Commission on Ethics & Public Trust

SUBJECT: INQ 2022-82, Section 2-11.1 (j) & (k), County Conflict of Interest and Code of Ethics, Conflicting Employment Prohibited

DATE: May 12, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (COE) to requesting our guidance regarding possible conflicts of interest in Mr. Daniel Rotenberg's outside employment.

FACTS

You are employed as the Division Director of the Real Estate Development Division (REDD) for the Miami- Dade County Internal Services Department (ISD). Your duties include asset management, leasing, and overseeing the County's real estate portfolio. You do not have an active Florida real estate license. Your duties do not include active real estate development, as that is handled by the Economic Development division. You are also co-owner of Beach Hill Capital Investors, LLC., a private equity real estate investment firm. You advise that Beach Hill is not actively acquiring any properties currently but is monitoring currently owned properties, most of which are *outside* of the State of Florida and none of which are in Miami Dade County. You indicate that you will not come into contact with any of the same clients, sellers, banks, lender, contractors, or subcontractors utilized for your county employee in your outside job. You indicate that you do not use the

same or similar resources in your outside employment as you do for your county position. Your position with Beach Hill does not require that you interact with any County employees, departments, or County boards, even for routine matters. Beach Hill is not a County vendor, does not rent space from ISD, and does not have any contracts with Miami Dade County.

ISSUE

Whether any prohibited conflicts of interest exist between your employment as Division Director of the Real Estate Development Division for the Miami Dade County Internal Services Department and your outside employment as co-owner of Beach Hill Capital Investors, LLC.

ANALYSIS

The Miami-Dade County Conflict of Interest and Code of Ethics prohibits county employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder 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.”

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County and/or the employee’s department. *See* RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

The Commission on Ethics staff has previously concluded that a conflict of interest did not exist when a prior Real Estate Development Division Director similarly sought ethics guidance for his outside employment in the real estate field. In 2005 Leland Salomon, Chief

of the Miami Dade County General Services Administration¹ Real Estate Development Division, sought ethics guidance for his real estate development consulting business. With the caveat that he submits a list of clients and projects to the department director on a quarterly basis and adheres to other restrictions as prescribed by the Miami Dade Ethics Code, Mr. Salomon was permitted to establish his real estate development consulting business. RQO 05-15.

Additionally, when Miami-Dade County REDD real estate officers sought to maintain outside employment in the real estate field, the Commission on Ethics has previously allowed such employment with specific conditions. The primary condition is that the County employees may not maintain an active Florida real estate license for the outside employment. RQO 08-31, RQO 12-11. The second condition is that none of the outside real estate work the County employee engages in involves any properties leased or sought by Miami- Dade County, or any agency or instrumentality of Miami- Dade County. RQO 08-31.

Here, the facts surrounding Mr. Rotenberg's outside employment share similar elements with the factual scenarios presented in RQO 05-15, RQO 08-31, and RQO 12-11. Mr. Rotenberg holds a similar position as Mr. Salomon held in RQO 05-15, as both men are (at the time of review by COE) employed by a Miami- Dade County agency, as part of the Real Estate Development Division of said agency, and as the REDD Division Director. Also similarly, neither Mr. Rotenberg nor Mr. Salomon's outside work involved the purchase of real estate. Just as the REDD real estate officers in RQO 08-31 and RQO 12-11 and Mr. Salomon (in RQO 05-15), Mr. Rotenberg, will not utilize an active Florida real estate license to engage in his outside employment. Lastly, Mr. Rotenberg's company does not own any property in Miami- Dade County, Florida.

OPINION

Based on the information that you have provided, it appears to be unlikely that the type of outside employment that you are seeking approve to continue to engage in would impair your independence of judgment in the performance of your County duties as the Division Director of the Real Estate Development Division for the Miami- Dade County Internal Services Department. This is because there is no overlap between your public duties and your outside employment; you will not come into contact with any of the same clients,

¹ Code of Miami Dade County Sec. 1-4.3 (2013) – “Reorganization of County Administrative Departments” renamed and reorganized many the General Services Administration functions to the Internal Services Department.

sellers, banks, lender, contractors, or subcontractors utilized in your county employment in your outside work; you will not use the same resources in your outside employment as you do in your County employment; the work would be performed outside your County hours; you will not maintain an active Florida real estate license for your outside work; your position with Beach Hill does not require that you interact with any County employees, departments, or County boards, even for routine matters; and lastly, Beach Hill is not a County vendor, does not rent space from ISD, and does not have any contracts with Miami-Dade County.

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 Beach Hill Capital Investors, LLC. *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.
- In the event the facts associated with your inquiry change, including but not limited to, activating your Florida real estate license, Beach Hill Capital Investors, LLC. investing in property in Miami Dade County, Beach Hill Capital Investors, LLC. becoming a county vendor, or Beach Hill Capital Investors, LLC. executing a contract with Miami Dade County, you are required to seek an ethics opinion regarding additional limitations on your outside employment

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, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 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.