



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Teleachelar Cannon
Recreation Leader
Miami-Dade County Parks, Recreation, and Open Spaces Department

Carolina Mugar
Recreation Therapist 2
Miami-Dade County Parks, Recreation, and Open Spaces Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-95, Section 2-11.1(j), Conflicting employment prohibited.

DATE: June 6, 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 conflicts of interest in Ms. Teleachelar Cannon's proposed outside employment.

Facts

An inquiry has been submitted concerning whether a conflict of interest would exist were Ms. Teleachelar Cannon, an employee of the Miami-Dade County Parks, Recreation, and Open Spaces Department ("PROS"), to engage in outside employment as a Driver for Transportation America, Inc. ("TA").

Ms. Cannon is currently employed by PROS as a Recreation Leader. Her job duties are primarily to oversee recreational activities for persons with intellectual disabilities at park facilities, document and track the progress of PROS program participants, and to transport PROS programming participants on community outings in County vehicles.

Ms. Cannon would like to engage in outside employment as a Driver for TA. TA is a Florida for-profit corporation that is the self-styled largest transportation company in South Florida.¹ Ms. Cannon's duties with TA would include driving a company vehicle transporting individuals who are unable to use community transportation because of their physical or mental impairment.

TA is a County vendor. However, the Chief of the PROS Contracts and Procurement Division advised that TA does not have a contract with PROS; rather, it has a contract with the Miami-Dade County Internal Services Department ("ISD") related to public transport routes under the purview of the Miami-Dade County Department of Transportation and Public Works ("DTPW"). Ms. Carolina Mugar, Ms. Cannon's PROS supervisor, has advised that neither she nor Ms. Cannon have any role in oversight or compliance with TA's County contract. Ms. Mugar added that, on occasion, PROS employees work with members of the public who need transportation services and those individuals frequently use TA. However, Ms. Mugar stated that PROS employees do not make transportation arrangements or referrals for PROS patrons; rather, PROS employees refer individuals who need transportation to 311 and let the families of the individuals who need transportation make all the necessary arrangements.

Ms. Cannon advises that her outside employment would only occur on the weekends, outside of the times/hours that she will be expected to perform her duties as a Recreation Supervisor for PROS. She further advises that, as part of her proposed outside employment, she may have some incidental contact with PROS clientele due to their use of TA vehicles for transportation, but she will not be required to routinely encounter the same or similar people or entities as in her County position. Ms. Cannon advises that her position with PROS does not involve the recruitment or management of County vendors or contractors. She also advises that no County resources will be used for her proposed outside employment. Ms. Cannon advises that she does not need a special license to conduct her County work, but that she will need a chauffeur's license for her TA work and TA will provide that to her. Finally, Ms. Cannon advises that, as part of her County position, she does not have access to non-public information that is, or could be, relevant to her proposed outside employment.

Issue

Whether any prohibited conflict of interest may exist between Ms. Cannon's County employment and her proposed outside employment as a Driver for TA.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") 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,

¹ See <https://www.transportationamerica.com/index.html#who-we-are>.

“[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 or the employee’s department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

The County Ethics Code does not prevent a County employee from engaging in outside employment with a County vendor, as long as the County employee does not have any involvement with the vendor’s contract with the County. *See* RQO 16-02; INQ 20-31; INQ 18-54.

Outside employment is more likely to conflict with County employment “when the two pursuits overlap or are closely related.” INQ 16-89 (citing RQO 12-11, INQ 12-159). However, “a similarity between an employee’s County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest.” INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

An employee of the Miami-Dade County Aviation Department was permitted to engage in outside employment as a municipal Shuttle Bus Operator for a division of TA, because his County work did not involve transportation beyond operating a waste truck, his outside employment was unlikely to lead him to interact with the same persons/entities as his County employment, and his outside employment did not use the same resources and occurred outside of the hours he worked for the County. *See* INQ 21-72. Additionally, a part-time Bus Operator of the Miami-Dade County Department of Transportation and Public Works (“DTPW”) was permitted to engage in outside employment with Limousines of South Florida (“LSF”), a division of TA, as a Bus Driver because, even though LSF was a County vendor that operated buses for the County, the County employee did not operate the buses on those routes, did not oversee the County contract with LSF, and did not otherwise come into contact with the same individuals as in his County employment. *See* INQ 20-28.

Thus, based on the information provided to us at this time, and after speaking with Ms. Cannon’s supervisor, it appears to be unlikely that the outside employment that Ms. Cannon is seeking to engage in would impair her independence of judgment in the performance of her County duties as a Recreation Supervisor. This is because her public duties and her outside employment do not overlap: her outside employment will be performed outside of her County hours; she will not come into contact with the same persons or entities involved in her County work beyond the possibility of incidental contact with PROS clientele; she will not use the same resources in her outside employment as used in her County work; and she will not have access to non-public information as part of her County employment that is, or could, be relevant to her outside employment. *See* RQO 17-01; RQO 16-02; INQ 21-72; INQ 20-28. While Ms. Cannon drives a vehicle as part of

her County position, the purpose and quality of that transportation is different than that expected in her outside employment, as evidenced by the fact that she will need a chauffeur's license for her outside employment, but she does not need one for her County employment. *See* INQ 21-72; INQ 20-28. Finally, it is significant that Ms. Cannon, does not have any authority to enforce, oversee, or administer any contracts between the County and TA, nor will she ever have occasion to do so. *See* RQO 16-02; INQ 20-31; INQ 18-54.

Opinion

Accordingly, based on the facts presented here and discussed above, Ms. Cannon would not have a conflict of interest in her proposed outside employment as a Driver for TA.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Ms. Cannon's permission to engage in her proposed outside employment:

- She may not engage in activities that relate in any way to her outside employment during her scheduled work hours (including phone calls, text messages, e-mails, or other communications) and she may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with her outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- She may not exploit her County position to secure special privileges or exemptions for herself and/or TA. *See* County Ethics Code § 2-11.1(g). This includes soliciting business for TA while on duty at PROS, either by handing out business cards or informing PROS clients about TA and/or its services. *See* INQ 17-175; INQ 22-81.
- She may not disclose and/or use any confidential and/or proprietary information acquired because of her County employment to derive a personal benefit, or for the benefit of TA. *See* County Ethics Code Section § 2-11.1(h).
- She may not represent TA before any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of her potential activities as a Driver for TA, it is important to note that she would be prohibited from doing any such activities on behalf of TA or its clients.
- She may not make referrals to TA for any transportation services not performed or provided by PROS. *See* County Ethics Code §§ 2-11.1(g) & (p); INQ 14-185. She also may not ask or instruct other PROS staff, or permit PROS staff under her supervision, to make referrals to TA. *See* INQ 17-175; INQ 22-81.
- She must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with her department director, and she **must file an Outside Employment Statement** with the County's Elections Department by noon on July 1st of each year. *See* County Ethics Code § 2-11.1(k)(2).

- She **must file a sworn statement** disclosing her outside employment and interest with the Clerk of the Court in accordance with Section 2-11.1(f) of the County Ethics Code.

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 directives from PROS or under state law. Questions regarding possible conflicts based on PROS directives should be directed to PROS 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.