
From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, June 12, 2014 9:11 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Ethics Opinion- Flora Seff, Re: Captain Garrandes (outside employment) INQ 14-138

INQ 14-138

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, June 12, 2014 9:10 AM
To: Seff, Flora (MDFR)
Cc: Centorino, Joseph (COE)
Subject: FW: Ethics Opinion- Flora Seff, Re: Captain Garrandes (outside employment) INQ 14-138

Ms. Seff:

You inquired whether a conflict of interest is created where Captain Garrandes, a Miami-Dade County firefighter, engages in outside employment as a dive instructor through his privately owned company if he also trains Miami-Dade Fire and Rescue (MDFR) personnel in dive classes and drills during his County employment. You have also inquired if a conflict of interest is created where County firefighters who attend these private classes seek to receive tuition reimbursement from the County.

As background, Captain Juan Garrandes (Captain) is a nationally certified SCUBA diving instructor who teaches dive classes for MDFR at the department's training division for firefighters required to obtain dive certification as part of their County employment. MDFR recently set a deadline for employees who were previously obtaining a pay incentive for dive pay of 5%, (approximately 100 employees) to obtain an additional dive certification in order to keep the dive pay. These employees are required to take the dive certification course while off duty unless they are currently bid into a position that requires the certification for the bid.

In previous years, the Captain has requested and been granted permission to engage in outside employment. His request for this year is pending an opinion from the Ethics Commission. The Captain is requesting permission to engage in outside employment as a diving certification instructor through his privately owned enterprise. In his private employment, the Captain teaches, supervises and oversees dive certification classes. You advise that you have no knowledge of whether the Captain uses County equipment or instructional materials prepared during his County employment for his private classes. However, you inform us that many of his private students are MDFR employees who take the courses and then seek reimbursement for the course fee from the County.

Prohibited Outside Employment, County Code at § 2-11.1 (j), Fla. Stat.112.313 (7)(a), and Prohibition on Exploitation of Official Position County Code at § 2-11.1(g)

In general, a fulltime County employee must not engage in outside employment that would conflict with his duties to the County or impair his independence of judgment in the performance of his public duties. See §§ 2-11.1 (j) and (k).

Conflicting employment frequently occurs when the outside work is closely related to or similar to the work the employee performs for the County, and involves supervision or interaction with the same employees, vendors or

organizations that an employee interacts with in their County employment. (See RQO 07-34, RQO 07-36, and INQ 11-25 which address related outside employment issues). I have also attached the Outside Employment Guidelines prepared by the Ethics Commission which provides additional guidance on the issue of conflicting employment.

In this case, the Captain's position as a dive instructor for MDRF places him in a very favorable position to recruit MDRF employees and subordinates for his private classes. In fact, you advise that many of the Captain's students are MDRF employees and some may be his subordinates. It follows that that a significant portion of the income generated from teaching private dive certification derives from the same County employees he interacts with and/or supervises during his County employment. Further, the Captain is responsible for evaluating MDRF employee performance in the private dive classes. Presumably, passing this class is required in order to obtain dive certification.

Given this close connection between the type of work the Captain performs and the fact that he likely would interact with County employees and subordinates who also pay him for his private dive classes, it is our opinion that engaging in this type of outside employment would create a prohibited conflict of interest because it would likely impair the Captain's independence of judgment in the performance of his public duties. See 2-11.1(j). It also raises concerns regarding possible exploitation of official position under § 2-11.1(g) of the County Ethics Code. We therefore advise that MDRF department should be mindful to ensure that employees engaged in such dual activities do not exploit their public position for private gain.

We also advise that County employees are subject to the State ethics law, which states, "[N]or shall an ... employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties." (Fla. Stat.112.313(7)(a) (2012)). State law is intended to prevent situations in which private economic considerations may override the faithful discharge of public responsibilities. While it is the State of Florida Ethics Commission that interprets and enforces this statute, given the facts listed above, frequently recurring conflicts would probably occur in this instance.

MDRF Employees Tuition Reimbursement, County Code at § 2-11.1 (d)

Because The Captain would enter into contracts with individual firefighters, rather than entering into a contract directly with MDRF, the individual contracts do not create ethics conflicts for those individuals relevant to the issue of their tuition reimbursement. If the county were to reimburse the firefighters for some of their tuition costs, that arrangement would not make the county a third party, in privity, to the contract.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics. Even if there were conflicts under the County Ethics Code approval of outside employment is at the complete discretion of your supervisors. The decision to reimburse tuition is outside the authority of the Ethics Commission.

Please do not hesitate to contact us if we may be of further assistance.

Best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



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From: Seff, Flora (MDFR)
Sent: Thursday, April 24, 2014 4:34 PM
To: Ethics (COE)
Cc: Strickland, Jeff (MDFR)
Subject: Request for Ethics Opinion

The Fire Chief is requesting an opinion from COE before approving this outside employment. Call me if you have any questions.

Thanks,
Flora

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Captain Juan Garrandes is certifying MDFR personnel while in an off duty capacity as Advanced Open Water Diver and they are paying him in cash for the service. The employees are now seeking tuition reimbursement from the County for the tuition.

Captain Garrandes' current primary assignment is the Technical Rescue Bureau OIC in the Training Division. Captain Garrandes is a nationally certified SCUBA Diving Instructor and has been compensated in the past by MDFR for teaching dive classes and drills for the Fire Department at our training facility. The Department recently set a deadline for employees who were previously getting a pay incentive for dive pay, 5%, to get an additional certification if they wanted to keep the dive pay. The employees are required to do it off duty unless they are currently bid into a position that requires the certification for the bid. This involves at least 100 employees.

At this time, dive instruction is not a primary job responsibility for Captain Garrandes but he is still currently used as a relief instructor to teach diving on duty on an as needed basis to reduce overtime incurred by the Dive Rescue Bureau.

Captain Garrandes has applied for permission from the Fire Chief for outside employment in past years. His request for this year has not been granted pending an opinion from COE.

Is Captain Garrandes in violation of the Ethics Code?