

Diaz-Greco, Gilma M. (COE)

From: Kirwin, Kevin (MDPR)
Sent: Monday, January 27, 2014 11:58 AM
To: Centorino, Joseph (COE)
Cc: Kardys, Jack (MDPR); Murawski, Michael P. (COE); Diaz-Greco, Gilma M. (COE); Binhack, Lucy (MDPR); Lee, Beatriz M. (MDPR); Roque, Marta (MDPR); Livingstone, David (MDPR)
Subject: RE: INQ - Kevin Kirwin, Assistant Director for Operations, Miami-Dade Parks Department (Outside Employment)

Mr. Centorino:

Thank you and your team for the prompt response and opinion on this issue. We will move to ensure compliance with the Code of Ethics Ordinance, Section 2-11(j).

Regards,

Kevin

Kevin M. Kirwin

Assistant Director for Operations
Parks, Recreation and Open Spaces Department - PROS
275 NW 2nd Street, 5th Floor
Miami, FL 33128
Kirwin@miamidade.gov
office 305.755.7910 cell 305.877.4444

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2008 Parks and Open Space System Master Plan***

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From: Centorino, Joseph (COE)
Sent: Monday, January 27, 2014 11:20 AM
To: Murawski, Michael P. (COE)
Cc: Binhack, Lucy (MDPR); Kirwin, Kevin (MDPR); Diaz-Greco, Gilma M. (COE)
Subject: INQ - Kevin Kirwin, Assistant Director for Operations, Miami-Dade Parks Department (Outside Employment)

Mr. Kirwin:

I understand that you are looking for some direction from our agency in order to establish a uniform policy concerning outside employment in your department. This request has come about as the result of an issue raised by a part-time employee in the Disability Services after-school program at Greynolds Park. This particular employee had been engaged in outside employment by a parent of a disabled child with whom the employee worked in connection with her part-time employment with the Disability Services program. The employee, who had engaged in the outside employment

against the direction of her supervisor, has now resigned the outside employment and will continue with her part-time position in the department.

Had the individual involved been a full-time employee, this issue would have been resolved easily by Section 2-11 of the Miami-Dade County Code, which requires that any outside employment by an full-time County employee must first be approved in writing by the employee's department head to prevent such an employee from engaging in outside employment that is "contrary, detrimental or adverse to the interest of the County or any of its departments." Although the Ordinances refers only to full-time employees, I would point out that Miami-Dade County Administrative Order No. 7-1, effective 5/13/2005 states that, "County employees must receive written approval from their department director prior to engaging in outside employment. The administrative order does not appear to be limited to full-time employees. In any event, your department is free to establish its own internal rule regarding such employment, to require departmental approval in order to avoid any instance where your director may feel that a particular type of outside employment conflicts with the best interests of your department.

Section 2-11.1(j) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, which applies to both full-time and part-time County employees, provides that no such employee "shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties." It would appear to me that the independence of judgment" of an employee, who is required by his or her position to provide certain services to a limited number of children at a County facility, would be compromised by that employee's being retained and remunerated by the family of one of those children to provide extra or outside services to one of those same children. I see a distinct possibility that the services owed to the children whose parents did not engage the employee in such private employment, might be compromised where the employee regarded Count-provided services to one of the children in his or her care as possibly affecting the employee's outside financial interests.

It would certainly be reasonable for the department to establish a policy that would avoid any possible violation of Section 2-11.1(j) or of the County's administrative policies.

If you have any questions or would like to discuss this matter further, please call me at 305-579-2594.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust

From: Murawski, Michael P. (COE)
Sent: Monday, January 27, 2014 10:48 AM
To: Centorino, Joseph (COE)
Cc: Binhack, Lucy (MDPR); Kirwin, Kevin (MDPR)
Subject: FW: Request for an Opinion

Joe:

Here's a follow up to the issue I discussed with you about the part-time Parks dept. employee who had the conflicting o/s employment. It appears as though the employee has terminated her o/s employment thus ending any conflict but the Parks Dept seems like it wants something from us in order to justify prohibiting this type of activity in the future. I'm not sure they need anything more from us than to just point out section 2-11.1(j) prohibits conflicting employment and they can advise, as they did in this case, employees to choose one or the other.

From: Kirwin, Kevin (MDPR)
Sent: Monday, January 27, 2014 6:49 AM
To: Murawski, Michael P. (COE)
Cc: Binhack, Lucy (MDPR)
Subject: Request for an Opinion

Hi Mike,

Please see Lucy's email detailing the situation that is presenting itself for an employee of the Miami-Dade Parks, Recreation and Open Spaces Department. The employee has opted not to request an opinion from your office and has resigned her employment with the parent of a child in her care during the Disability Services afterschool program at Greynolds Park. We would like to put this issue to rest in this instance and also establish as set policy throughout our system. Lucy and/or me would be the initial point of contacts on this issue and Lucy is the subject matter expert on this issue within PROS.

If possible could you please give us an estimated amount of time that it may take your office and the Commission on Ethics to render an opinion – knowing that that estimate is not a due date.

Regards,
Kevin

Kevin M. Kirwin

Assistant Director for Operations
Parks, Recreation and Open Spaces Department - PROS
275 NW 2nd Street, 5th Floor
Miami, FL 33128
Kirwin@miamidade.gov
office 305.755.7910 cell 305.877.4444

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From: Binhack, Lucy (MDPR)
Sent: Friday, January 24, 2014 4:36 PM
To: Kirwin, Kevin (MDPR)
Subject: commission on ethics opinion

It came to my attention on 1/16/14 that a Greynolds Camp Supervisor who recently resigned, allowed one of her long term part time Recreation Leader to work as a Personal Care Attendant – outside of her county employment – and against her supervisor's direction - for one of the teenagers in the camp. All participants in the camp have disabilities. The employee was given two options: 1. Resign either job, or, 2. Request an opinion from the Commission on Ethics as to whether the situation creates a conflict of interest. The employee was given a deadline of January 24. The employee reported to her onsite supervisor on 1/24, that she had resigned her duties as a Personal Care Attendant to keep her county job.

Recreation Leader are expected to teach and assist participants with disabilities in sports, recreation, social, literacy, nutrition education and community activities. Employees are required to provide appropriate accommodations to each participant based on the participants' level of independence during these activities. Assistance/accommodations may include anything from toileting or feeding to verbal cueing or behavior management. They may provide physical assistance with mobility, pushing a wheelchair or managing a walker, support during social activities, teach how to handle money in the community, or help participants manage arts and crafts activities through verbal and/or physical assistance. The ratio is 1 staff to 5 participants, and the program is partially funded by The Children's Trust and requires equal attention to each participant.

Parents often have difficulty obtaining the services of qualified individuals to care for their disabled children. If a Recreation Leader works for one of the participants in the program, outside of the program, it can create many different conflicts:

- The parent may direct the employee to follow certain protocols with the disabled child during their county job that the employee would not otherwise do as a county employee - either due to the time and individual attention the protocol may take, or due to the training level required of the protocol.
- Due to the fact that the employee spends more individual time with the participant they work outside of the county with, they have more knowledge about the individual, a stronger sense of the individuals needs and desires, that may lead to favoritism, since they do not have the same volume of knowledge/information about the other participants in the program.
- Participants with disabilities may not comprehend the difference between the employee's responsibilities during the county job, and the outside job – expecting the same individual treatment they receive from that employee at their home, causing confusion and disappointment for the participant.
- Employees may not be adept at making a clear delineation between their relationship with the participant at their county job in a group setting as opposed to their relationship with the participant in an individual setting outside of their county job, and perform duties on behalf of the participant the same in both settings regardless of the fact that they have many other participants to work with.
- Employees may make more effort to accommodate the participant they work outside of the county with, to continue to satisfy their outside employer, rather than provide the same effort and attention to all of the participants with disabilities.
- Once aware of the situation, other parents, other participants with disabilities in the program, and/or other employees may feel the situation creates a general sense of favoritism to the participant the employee works outside the county for. This breaks down morale and teamwork.

Lucy Binhack, CTRS, MPA
Parks Disability Services Manager
M-D Parks, Recreation & Open Spaces Dept.
275 NW 2nd Street, # 507
Miami, FL 33128
305-755-7848
Fax: 305-755-7843
binhack@miamidade.gov

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