



To: Cathy Swanson-Rivenbark, City Manager for the City of Coral Gables

From: Miriam Soler Ramos, Deputy City Attorney for the City of Coral Gables

*MSR*

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Police Chief's Role with the University of Miami Football Team

Date: April 10, 2017

---

In September 2015, this office was asked to provide an opinion regarding activities assumed to be outside employment that the then Interim Police Chief was engaged in with the University of Miami (attached as Exhibit A). The nature of the "employment" was described as involving four roles: security advisor, mentor to the players, volunteer coach and liaison to other police departments when the team is traveling. Additionally, it was based on the fact, as provided, that Florida Highway Patrol (FHP) provides security for the team. The opinion assumed that the activities constituted "employment" under the Miami-Dade Ethics Code and was intended to address only whether this type of outside employment would be conflicting employment. The opinion did not address reporting or permission requirements.

This office has now been asked: (1) to consider whether the Chief, in his role as security advisor with the University, has a conflict when employees of the Coral Gables Police Department (CGPD) are hired by the University either in addition to or instead of FHP; and (2) to expand on outside employment permission and reporting requirements.

In order to address both questions, it is important to consider what each role entails as, according to the Miami-Dade Ethics Commission, whether a particular service constitutes outside employment (for purposes of disclosure) does not depend on whether the employee actually receives money or other consideration for the work performed but rather whether the work constitutes a service that is "customarily compensated," "customarily eligible to be compensated" or "traditionally compensated." The Chief provided a memorandum detailing each of the four roles (attached as Exhibit B). A review of the memorandum reveals a very unique set of circumstances which create a case of first impression. There is no case previously decided that contemplates the four roles as described. The duties the Chief provides for the University's football team are largely in the nature of volunteer work however, some components resemble services for which an individual would customarily be compensated. Therefore, in an abundance

of caution, the Chief should treat his activities with the University as outside employment. Based on this premise, this opinion will address the two questions posed.

Answer to question 1: Where the Chief is working for the University, in his role as security advisor, and CGPD employees are present, a conflict is created unless some other person (i.e. a Lieutenant, Major, Assistant Chief or the Director of Public Safety) is present to command those employees during the event. In other words, the Chief cannot serve as the commanding officer to CGPD employees while he is acting for the University. This type of situation is addressed in prong (8) of the “Outside Employment Guidelines” by Miami-Dade Commission on Ethics referred to in the first opinion. Although no factor, alone, dictates whether employment is conflicting, the situation described above illustrates the classic case of an employee being put in the position of “serving two masters” which almost always results in a finding of conflicting employment.

Answer to question 2: Pursuant to Sec. 2-230(a)(3) of the City Code and Rule 18.3 of the City’s Personnel Rules and Regulations<sup>1</sup>, any employee who answers to the City Manager and wishes to engage in outside employment, must obtain permission from the department director and City Manager prior to doing so. This permission must be obtained yearly. Given that the Chief is a department director, he must obtain permission from the City Manager on a yearly basis and said permission may be conditioned by the Manager as she deems appropriate. The reporting requirement is governed by Sec. 2-230(b) of the City Code and Sec. 2-11.1(k)(2) of the Miami-Dade County Code which provide that all employees engaged in outside employment shall file, under oath, an annual report indicating the source of the outside employment, the nature of the work being done and any amount of money or other consideration received by the employee from said outside employment. The report is due July 1<sup>st</sup> of each year and is filed with the City Clerk. (Note: The Miami-Dade Ethics Code has a three-year statute of limitations; therefore, if forms have not been filed they should be filed for the last three years as well as on the upcoming July 1, 2017 deadline in order to achieve full compliance.)

This opinion is issued pursuant to Sec. 2-201(e)(1) and (8) and Sec. 2-237 of the City Code authorizing the City Attorney’s Office to issue opinions and interpretations of behalf of the City.

April 2017

---

<sup>1</sup> The City Code and Personnel Rule contemplate gainful outside employment however, for purposes of this opinion and in light of the Ethics Commissions position, both are being read consistently with the Ethics Commissions interpretation.

**CITY OF CORAL GABLES**  
CITY ATTORNEY'S OFFICE

OPINION REGARDING POLICE CHIEF'S ROLE WITH THE UNIVERSITY OF MIAMI FOOTBALL TEAM

In September 2015, this office was asked to provide an opinion regarding activities assumed to be outside employment that the then Interim Police Chief was engaged in with the University of Miami (attached as Exhibit A). The nature of the "employment" was described as involving four roles: security advisor, mentor to the players, volunteer coach and liaison to other police departments when the team is traveling. Additionally, it was based on the fact, as provided, that Florida Highway Patrol (FHP) provides security for the team. The opinion assumed that the activities constituted "employment" under the Miami-Dade Ethics Code and was intended to address only whether this type of outside employment would be conflicting employment. The opinion did not address reporting or permission requirements.

This office has now been asked: (1) to consider whether the Chief, in his role as security advisor with the University, has a conflict when employees of the Coral Gables Police Department (CGPD) are hired by the University either in addition to or instead of FHP; and (2) to expand on outside employment permission and reporting requirements.

In order to address both questions, it is important to consider what each role entails as, according to the Miami-Dade Ethics Commission, whether a particular service constitutes outside employment (for purposes of disclosure) does not depend on whether the employee actually receives money or other consideration for the work performed but rather whether the work constitutes a service that is "customarily compensated," "customarily eligible to be compensated" or "traditionally compensated." The Chief provided a memorandum detailing each of the four roles (attached as Exhibit B). A review of the memorandum reveals a very unique set of circumstances which create a case of first impression. There is no case previously decided that contemplates the four roles as described. The duties the Chief provides for the University's football team are largely in the nature of volunteer work however, some components resemble services for which an individual would customarily be compensated. Therefore, in an abundance of caution, the Chief should treat his activities with the University as outside employment. Based on this premise, this opinion will address the two questions posed.

Answer to question 1: Where the Chief is working for the University, in his role as security advisor, and CGPD employees are present, a conflict is created unless some other person (i.e. a Lieutenant, Major, Assistant Chief or the Director of Public Safety) is present to command those employees during the event. In other words, the Chief cannot serve as the commanding officer to CGPD employees while he is acting for the University. This type of situation is addressed in prong (8) of the "Outside Employment Guidelines" by Miami-Dade Commission on Ethics referred to in the first opinion. Although no factor, alone, dictates whether employment is conflicting, the situation described above illustrates the classic case of an employee being put in the position of "serving two masters" which almost always results in a finding of conflicting employment.

Answer to question 2: Pursuant to Sec. 2-230(a)(3) of the City Code and Rule 18.3 of the City's Personnel Rules and Regulations<sup>1</sup>, any employee who answers to the City Manager and wishes to engage in outside employment, must obtain permission from the department director and City Manager prior to doing so. This permission must be obtained yearly. Given that the Chief is a department director, he must obtain permission from the City Manager on a yearly basis and said permission may be conditioned by the Manager as she deems appropriate. The reporting requirement is governed by Sec. 2-230(b) of the City Code and Sec. 2-11.1(k)(2) of the Miami-Dade County Code which provide that all employees engaged in outside employment shall file, under oath, an annual report indicating the source of the outside employment, the nature of the work being done and any amount of money or other consideration received by the employee from said outside employment. The report is due July 1<sup>st</sup> of each year and is filed with the City Clerk. (Note: The Miami-Dade Ethics Code has a three year statute of limitations; therefore, if forms have not been filed they should be filed for the last three years as well as on the upcoming July 1, 2017 deadline in order to achieve full compliance.)

This opinion is issued pursuant to Sec. 2-201(e)(1) and (8) and Sec. 2-237 of the City Code authorizing the City Attorney's Office to issue opinions and interpretations of behalf of the City.

April 2017

---

<sup>1</sup> The City Code and Personnel Rule contemplate gainful outside employment however, for purposes of this opinion and in light of the Ethics Commissions position, both are being read consistently with the Ethics Commissions interpretation.

# CITY OF CORAL GABLES

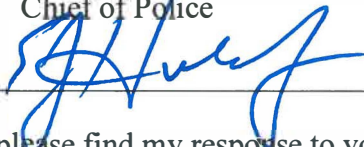
## -MEMORANDUM-

**TO: Frank G. Fernandez**  
ACM/Director of Public Safety

**DATE:** April 10, 2017

**FROM: Edward J. Hudak, Jr.**  
Chief of Police

**SUBJECT: Complaint from**  
**Hard Rock Stadium**



---

Below please find my response to your previous emails, regarding clarification of the work I do with the University of Miami Athletic Department:

- 1) In my role as a security advisor, I only give advice to the Director of Football Operations, Head Football Coach and Athletic Director and his immediate staff. I do not give instructions independently or as a law enforcement officer to any entity or other law enforcement agency. Instructions or requests come from the members of the Florida Highway Patrol that are assigned to the detail. If there are security questions from the Athletic Department administration they may inquire of me on what I think is the most prudent way to proceed on an issue of team security or other similar circumstance that may arise during the course of a large team event or similar concern. During games and team movements I have been with the Head Coach on and off the field. If any issue arises from both a security and internal operations standpoint that the Head Coach needs to be made aware of the administration advises me and may lead to a change in his movements. Those decisions come directly from the Athletic Director or his staff, at no time do I give any orders or direction as it pertains to any security issues. An example of this is when the Sports Information Director has an interview request that has been approved in the middle of a game. If that approved request has been granted he will advise me and I will direct the Head Coach to the interview coming off or on to the field of play. Likewise, if the Head Coach has an issue or wants something done in a non-police related matter he will ask me to instruct or locate the coach or assistant for him.

During the regular season as well as the post season, I have been asked to review internal security plans of the football team as well as other teams within the athletic department. Again, these recommendations are only given to the athletic department staff. When there has been any interaction with regards to escorts and team security either at a hotel or locally, the point of contact has always been with the assigned FHP Troopers. This makes up about 10% of the overall volunteer work that I do with the Athletic Department.

- 2) As a long time mentor to all student athletes within the Athletic Department, I have made myself available to anyone who may have any issues. The requests

come quite frequently when I attend practices or games as well as phone calls from parents and students alike. There are no real set times for this and it seems to be very productive to have someone who is in law enforcement and has also played sports at the University. The issues have ranged from family issues to school issues to future plans after their collegiate sports life has ended. I have conducted hundreds of briefings and presentations to teams, students, coaches and families on safety tips and “right choices”. I have been very clear with the student athletes and coaches as well as staff members that I cannot and will not give any advice or opinions about any criminal issues that any student athlete or any one from the athletic department could be involved in. I have clearly stated this on many occasions over the years as it would be a clear conflict of interest. My role of a mentor is just that, to engage the student athlete before he or she would make a mistake that is criminal in nature. I have several PowerPoint presentations that I can provide which are the templates of what I present every year. I would say that this part of my involvement is about 70% of my volunteer time with the University of Miami. None of this is done while in my official capacity of a Coral Gables Police officer or Chief.

- 3) Over the years, the NCAA has greatly restricted the ability of volunteer coaches. The role I play now is another set of eyes that has come with the understanding of what details are required by position. There has been very little involvement recently compared to the past when I had charted kick coverages and compiled scouting reports on opponents during the pre-game. That information was always forwarded to the position coach. The other responsibility is what they call the “Get Back Coach”. During games it is my responsibility along with the strength staff to ensure that players and coaches stay within the allowable area of the sideline bench. The other part of the sideline security is to issue passes to those persons who are authorized directly by the Head Coach, Director of Football Operations or the Athletic Director himself. Again, if someone from the outside is in that area and not authorized, an FHP Trooper is notified and the appropriate authorized law enforcement persons are asked by them to assist in the removal of those unauthorized persons. The final phase of that is to ensure the team movement on and off of the field of play and the safe passage to and from the busses that are transporting the team. On occasion, if there is an unruly fan the assigned local law enforcement officer is asked to deal with the fan. At no time do I act as a police officer in dealing with those kinds of issues since I have never been in a police uniform or readily identified as a police officer while with the team. On most occasions when the Head Coach has determined it is time to depart he will request me to gather the players for an on time departure. Because of the players daily familiarity with me they respond immediately when I request them to board the busses for departure. This makes up about 15% of my overall volunteer time with the Athletic Department.
- 4) With regards to my liaison with other police agencies, the only real contact that I have is on road trips when off duty officers are hired by the Director of Football Operations to patrol the hallways overnight. If an issue arises, the local officers are provided my room number and cell number to notify me for issues after bed check has occurred. I do not hire or coordinate the hiring of these officers that is strictly

done by the Director of Football Operations. If the Director has questions he may consult with me on a need assessment but I do not have any direct contact with agencies unless asked to by the Athletic Director which has happened very seldom. During those interactions I again never have or would identify myself as a Coral Gables Police Officer. Total approximate time for these kinds of issues its 5%.

I have volunteered with the University of Miami athletic program for over 25 years. My involvement, both as a former athlete and a role model has been recognized and copied in other mentor programs in the United States and appreciated be the University. As a result I was awarded the Presidents Service award by the University's Hall of Fame. I am proud of the role that I have played in teaching young men and women to respect and relate to law enforcement. Over the years, for some student athletes their interaction with me is the first positive one they have had with the police.

Please let me know if I can provide any additional information.