



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jimmy Morales, Esq.
City Manager
City of Miami Beach

FROM: Jose J. Arrojo
Executive Director

Martha Diaz Perez
Staff Attorney

SUBJECT: INQ 19-126, Participation Conflict 2-11.1(n); Exploitation of Official
Position, 2-11.1 (g), Family Member Employed by City Vendor

DATE: December 3, 2019

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a potential managerial participation conflict.

Issue:

Does Jimmy Morales, the Miami Beach City Manager, have a managerial participation conflict relating to matters involving a city vendor that employs his adult daughter in an entry level position?

Facts:

Jimmy Morales, City Manager for the City of Miami Beach, inquired regarding a possible conflict of interest arising out of his position as City Manager and the employment of his daughter at Boucher Brothers Management (BBM), a City vendor.

BBM operates the beach concessions on the public beaches of the City as well as many of the private beach concessions granted to hotels and condos by the City (the hotel and/or condo then hires BBM to operate the concessions).

Mr. Morales has indicated that his daughter is employed in an entry-level position with BBM. She is not part of management and she does not lobby the City on behalf of her employer. Her role in the company is limited to the operational side of the business.

Mr. Morales, laudably prior to the issuance of this opinion, advised that he intends to recuse himself from *any* City matter involving BBM and any subsidiary, affiliate or principal thereof. As a result, he would be delegating final authority over any decision or recommendation to an Assistant City Manager as well as signatory authority over contracts or agreements.

Discussion:

Section 2-11.1(n) of the County Ethics Code (*Prohibitions where financial interests are involved*) would prohibit the city official from participating in any official action, directly or indirectly, affecting a business in which he or his immediate family (i.e., daughter) has a financial interest. Financial interest has been defined as an interest in the nature of an investment. *See* §769 Rest. Law of Torts

Section 2-11.1(g) (Exploitation of official position) prohibits the city official from using his official position to secure special privileges or exemptions for himself or others, unless specifically permitted by ordinance or resolution. *See also* Section 2-451(a), City of Miami Beach Code (*Use of position to secure special privileges*)

In this instance, Mr. Morales's daughter is an employee of the City vendor. Notably, she is not involved with regard to the transactions between her employer and the City. Since Mr. Morales's daughter does not have a financial interest in BBM, Mr. Morales does not have a prohibited conflict of interest in regard to matters between the City and BBM under Section 2-11.1(n) of the Ethics Code. *See* INQ 15-207 (No conflict of interest where the wife of the County Mayor's Chief of Staff lobbies on behalf of a non-profit hospital overseen by a County department which reports directly to her husband because she is a salaried employee without any financial interest over decisions regarding the hospital. Nonetheless, due to the possibility of an appearance of impropriety, removal from oversight of any issue concerning the hospital is fitting). *But see* INQ 14-234 (Conflict found where the son of the Asst. Director of a division in the County's RER Department is employed by a law firm specializing in zoning issues and will have contacts with RER because the son's financial interests could be affected by actions taken by the County employee's Department therefore, County employee should be removed and insulated from any actions in connection with his son's clients or firm).

In all government matters, especially those regarding procurement, appearances of impropriety are paramount. Exploitation can take many forms, but often it involves acting or making decisions that specifically benefit oneself *or others* or disclosing confidential information in order to benefit oneself *or others*. Exercising oversight over contracts, agreements or decisions regarding a city vendor when one's immediate family member is employed by that vendor could be perceived as an exploitation. *See* INQ 18-58 (Conflict

of interest where County engineer with oversight over a contract with company where his wife is shareholder even though she is not involved with contract).

Due to his position as City Manager and the perceived appearance of impropriety, we concur with Mr. Morales's decision to recuse himself from all matters involving BBM and the delegation of authority to another city official.

Lastly, Section 2-11.1(f) of the County Ethics Code requires disclosure by County employees or their immediate family members if they work for a firm that has *substantial business commitments* with the County. Therefore, Mr. Morales must file a sworn statement disclosing his daughter's employment with BBM with the City Clerk. *See* RQO 15-06

We note that, the conflict of interest requirements under Section 2-458 of the City of Miami Beach Code (*Supplemental abstention and disclosure requirements*) which require the recusal and abstention by public officials on any matters where the official has a conflict of interest, advances the City's policy that, "no officer or employee of the city, or any of its agencies or subdivisions, and no member of the city commission, shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction, or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of his duties in the public interest". *See* Section 2-446, City of Miami Beach Code

Conclusion:

Section 2-11.1 (n) of the Ethics Code does not create a managerial participation conflict for Mr. Morales on matters relating to BBM, a city vendor, because his adult daughter is employed in an entry level position and does not have a financial interest in BBM. However, consistent with prior informal opinion guidance and to avoid any appearance of impropriety, Mr. Morales' recusal from all matters involving BBM is appropriate.

This opinion is limited to the facts as you and City staff 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.

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 Ethics Commission 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.

