

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, July 30, 2019 9:36 AM
To: Sanchez, Rodzandra (COE)
Subject: INQ 19-77
Attachments: INQ 19-77.docx

INQ 19-77 Garrote

From: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Sent: Tuesday, July 30, 2019 8:26 AM
To: Garrote, Cynthia (ISD) <Cynthia.Garrote@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 19-77

Dear Cynthia,

Thank you for contacting the Miami-Dade County Commission on Ethics & Public Trust and requesting our guidance. Attached is INQ 19-77 addressing your question. Please do not hesitate to contact us if you have any questions or if we may be of further assistance.

Cordially,

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
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MEMORANDUM

TO: Cynthia Garrote
Procurement Analyst & Ethics Officer, ISD

FROM: Martha D. Perez
Staff Attorney

DATE: July 30, 2019

SUBJECT: INQ 19-77, §2-11.1(x), County Ethics Code (Reverse Two-Year Rule)

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding Mr. Thomas' prospective employment in ISD.

Question Presented: Whether Mr. Thomas (Thomas) would be in violation of Section 2-11.1(x), the County's Reverse Two-Year Rule, in the position of Security Management Inspector in ISD.

Factual Background: Thomas worked as a Security Guard assigned to MIA for County vendor/ service provider AlliedUniversal Security Service (Allied) until May 19, 2019. Thomas then became employed by the County on May 20, 2019, as a Security Cargo Officer for MIA.

Thomas has applied for employment in the Internal Services Department (ISD) for the position of Security Management Inspector (SMI). As part of this position, Allen Nelson, ISD's Chief of Security (Nelson), has advised that Thomas would be entrusted with the following duties and responsibilities:

- conducting post inspections throughout the County facilities, excluding the Airport, Seaport or Water & Sewer sites. These inspections include ensuring that the unmanned facilities are "operational" *and that the security officers at*

the remaining facilities are on post, properly licensed and current in their post orders;

- responding to burglary, panic, robbery alarms and assisting with any necessary evacuations; and
- responding to reports of unusual occurrences or problems in the facilities.

You have indicated that most of the County facilities that Thomas would be inspecting are manned by Allied security guards. Nelson has further advised that the listed job description for SMI needs to be updated to reflect the “explicit instructions” given to SMI restricting their roles to observation and reporting, “without any authority over or interaction with the security vendor.” Thomas will not be dispatched to MIA, his former employment site.

Discussion: A County employee cannot be in a position where he or she would be interacting with his former employer or its employees in such a way as to violate Section 2-11.1(x) of the County’s Ethics Code, the Reverse Two-Year Rule. This provision bars a former employee of a County contractor from performing any “contract-related duties” regarding the former employer, where that former employer is a bidder, proposer, service provider, contractor or vendor for the two-year period. “Contract-related duties” include, without limitation, “service as a member of a County certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of a contract; contract enforcement ¹, oversight ² or administration ³; amendment, extension or termination of contract; or, forbearance regarding any contract.” “Contract related duties” also include task authorizations or approvals, *or any other decision-making authority regarding the former employer or its employees.* See RQO 17-04; INQ 16-36

Although it has been stated that, **presently**, the SMI position does not involve supervision of the security duties performed by County vendor (Allied) security guards,

¹ Enforcement” includes making sure a rule is followed. <https://thelawdictionary.org/enforcement/>

² “Oversight” means regulatory supervision. <https://www.merriam-webster.com/dictionary/oversight>

³ “Administration” is synonymous with management and oversight. <https://www.merriam-webster.com/dictionary>

the current job description suggests otherwise. A review of a 2012 Human Resources classification of ISD's SMI position reveals that the tasks performed include inspection of security posts "to ensure that all contract personnel (management, contract supervisor and site personnel) are in full compliance with the contract, site post orders and all directives then in effect. Receives, investigates and makes recommendations for customer/citizen complaints regarding contract guard/screener services. Makes recommendations for Liquidated Damages based on non-compliance and/or infractions..."⁴

While it is noted that Thomas would not be dispatched to his prior location at MIA, there is a discrepancy over the assumed lack of supervisory authority over security guards and the actual job description of the SMI position which requires monitoring to ensure that security guards (Allied included) comply with the contract, post orders and directives. If the duties of the SMI are limited to checking security officers on post⁵ and reporting on any purported violations, this must be described and clarified in the job description and ISD directives.⁶

Pointedly, on 2/12/2014, David Thibaudeau, ISD's then-Deputy Chief of Security sent a memo to Daniel Payne, ISD's then- Chief of Security, informing him that "although, the Security Inspectors have no contractual authority to remove security personnel, write Liquidated Damages or the ability to influence the removal or the award of a contract security vendor for Miami-Dade County, *instructions have been given to them not to inspect security personnel or facilities that are assigned to their previous respective employers...*" See Memorandum enclosed in COE investigation K 14-13.⁷

⁴ A 2012 job description of the SMI position also included 5% participation in making recommendations to superiors on policies and procedures related to the security services contracts.

⁵ See ISD's "Requesting a Security Guard Service" Procedure No. 720

⁶ The Security Management Inspector inspects the work of the security guard and reports any violations to their security supervisors who decide whether to cite the vendor/service provider. The COE investigation concluded that, "the employees had been assigned specifically so as to avoid any oversight over the contracts the County has with their previous employer." See K 14-13

⁷ K 14-13 was initiated in connection with ISD's hiring of seven security inspectors who were former employees of private security County vendors and whose jobs allegedly included the oversight of security vendors who were their former employers.

Conclusion: Consequently, for Thomas to be able to perform the duties and responsibilities of Security Management Inspector without violating the Reverse Two-Year Rule, he must not engage in any contract-related duties as discussed herein involving Allied and/or its employees for two years. It is recommended ISD's SMI's job description be modified as soon as practicable to clearly reflect the position's absence of supervisory authority over security guards and lack of interaction with County vendor security personnel. Additionally, the division's directives must be reconciled with Deputy Chief Thibaudeau's 2012 memorandum. Lastly, in Thomas' case, prohibited activities with regard to his former employer (Allied) would also extend to, refraining from participation in any solicitation where the County vendor is a bidder or proposer for two years.

If Thomas is selected for this position, we suggest that any future inquiries regarding the applicability of Section 2-11.1(x) to Thomas' actions with Allied and/or its employees be directed to this office.

This opinion is limited to the facts as you 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.

