



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Fernando Mojena-Amaya
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FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-133, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: December 7, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts: You are employed as a Senior Systems Analyst Programmer for the Information Technology Department (ITD). You would like to engage in outside employment for your privately-owned company, Cubeware.

Your current job duties as a Senior Systems Analyst Programmer include providing IT support to the Department of Transportation and Public Works in the form of software development. You provide design and implementation of new website, mobile, and windows applications to modernize Miami-Dade County services. You are responsible for maintaining the new Miami-Dade Transit Go app front end. You also act as a Project Manager and developer for the new SFRTA HHU mobile application.

You are the owner of a company registered with the State of Florida under the fictitious name of Cubeware. Your work with Cubeware will include the creation of new websites and mobile

applications for small companies. You will design and develop mobile video games and applications to be published in Google Play and Apple stores. Additionally, you will provide software development consulting to other companies.

You advise that Cubeware is not a County vendor nor is it seeking to be a County vendor. Your work with Cubeware would occur outside of your County hours and will not conflict with any potential on-call hours required for your County employment. You further advise that your work would not require the use of any equipment or resources which you use in your County employment nor would you work with the same clients.

Issue: Whether any prohibited conflicts of interest may exist between your employment as a Senior Systems Analyst Programmer for ITD and your prospective outside employment for your privately-owned company, Cubeware.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds that it is contrary, detrimental or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In consideration of your inquiry we must look to several factors, one of which is whether there is similarity in your duties as a Senior Systems Analyst Programmer for ITD and your prospective work with Cubeware. In this instance, both positions require you utilize the same knowledge base involving web and mobile application design and development; however, there is no indication that a prohibited conflict of interest exists.

The Ethics Commission has previously opined that a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing

in the two positions does not preclude you from engaging in outside employment provided any necessary limitations are imposed. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment for a privately owned company does not in and of itself create a conflict of interest. *See* INQ 20-43.

Nevertheless, you must abide by certain limitations and cautions outlined below to avoid a conflict:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of Cubeware, or for the benefit of Cubeware clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself, Cubeware, or Cubeware clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent Cubeware or Cubeware clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for Cubeware, it is important to note that you would be prohibited from doing any such activities on behalf of Cubeware or its clients.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.