

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Via email at: hectorg@miamidade.gov

May 22, 2015

Hector Garnica, Computer Services Manager
Miami-Dade Information Technology Services (ITD)
5680 SW 87th Ave
Miami, FL 33173

Re: RQO 15-03

Outside Employment

See Miami-Dade County Ethics Code at §§ 2-11.1 (g) and (j)

Dear Mr. Garnica:

IN A PUBLIC MEETING on May 13, 2015, the Miami-Dade Ethics Commission opined that a Senior Systems Analyst and Programmer in the Miami-County Information Technology Department (ITD) should not be permitted to engage in outside employment as an IT consultant for a private client who provides transportation services to municipalities because this type of outside employment is closely related to the work he performs for the County; it would likely impair the employee's independence of judgment in the performance of his public duties; and: could, in some cases, result in an exploitation of his official position.¹

As background, Mr. Andrew Hagewood (Hagewood) is employed as a Senior Systems Analyst and Programmer in the County IT Department. His job responsibilities include developing, managing and maintaining several County Transit Department internal and external websites, web applications, and the County Transit Department's transit tracking system (MDT Tracker), mobile tracker website, and mobile tracker application. Hagewood is seeking to be permitted to engage in outside employment as an IT consultant developing

¹ See Miami-Dade County Code at § 2-11.1 (j), *prohibition on conflicting employment*, and § 2-11.1 (g), *prohibition on exploitation of official position*. Additionally, the County's Administrative Order AO 7-1 prohibits County employees from accepting outside employment where a real or apparent conflict of interest with one's official or public duties is possible.

transportation tracking systems for a private company (owned by the Principals of a County vendor) that provides fixed and flex transit services to municipalities.² In order to provide users with a uniform transit tracking system, the County foresees interfacing the County tracking systems with the municipal transportation tracking systems sometime in the future.

The County Ethics Code at Section 2-11.1(j) prohibits County employees from accepting outside employment that would impair their independence of judgment in the performance of their public duties.³ Due to the County's foreseeable interest in integrating both transportation tracking systems, the employee's supervisor has expressed a belief that a conflict of interest exists that would preclude outside employment.⁴ Based on the foregoing facts, the Commissioners concluded that divided loyalties between Hagewood's public and private employment are likely to develop because he holds a senior position in his department and has been the main developer and administrator of the County's entire transportation tracking system. Moreover, it would be difficult for Hagewood to avoid conflicting or divided loyalties because of his unique knowledge and intimate familiarity with the County's transportation tracking system, and the distinct possibility that the interests of the municipalities may conflict with the County's interests within an integrated system.⁵

Furthermore, the County Ethics Code at Section 2-11.1(g) prohibits County employees from using their "official position to secure special privileges or advantages" for themselves or others. One of the rationales underlying this section is that County employees should not use the knowledge they have acquired in their County employment to gain unfair advantage for themselves or their private employers. In a previous informal opinion conflicting employment was found where the Deputy Property Appraiser sought to engage in outside employment working as a consultant with a Colombian company to develop IT programs to be used in property-tax searches. In that case, the COE opined that although the Deputy Property Appraiser had not been involved in the development of County data banks IT programs that allowed for property searches, the fact that he was intimately familiar with these programs suggested that opportunities to use County resources for

² Mr. Hagewood is seeking to provide IT consulting services (a tracking system for municipal transportation routes) to Limousines of South Florida (LSF) through his privately owned company Cymagination, Inc. (CI). LSF is not a County vendor; however, the principals of LSF, Raymond Gonzalez and Rene Gonzalez, are also the principals of Transportation America, Inc. (TAI), which is a County vendor. LSF contracts with several municipalities in Palm Beach County, Broward County and Miami-Dade County to provide fixed transportation services (such as local trolley or bus services) as well as flex transportation services

³ A similar prohibition is found at Fla. Stat. §112.313(7)(a) (2014)

⁴ Further evidence of the interrelation between County and municipal systems is that the County provides some funding for municipal transportation systems. Email from Hector Garnica, Computer Services Manager, Miami-Dade County Information Technology Department (ITD), to Gilma Diaz-Greco, Staff Attorney, Miami-Dade County Commission on Ethics and Public Trust (Apr. 15, 2015, 1:53 p.m. EST(on file with author).

⁵ See INQ 13-88 (recommending outside employment be denied because a conflict of interest was created largely are a result of the employee's heightened position and job responsibilities).

private gain could arise—albeit unintentionally.⁶ Arguably, in this case the opportunity of using the knowledge and resources he has acquired as a result of his County employment for private gain is even greater because of his senior level role in the development of the County tracking system. The expertise in creating and administering transportation tracking systems that Hagewood developed as a result of his County employment would provide an inherent advantage in bidding for municipal tracking systems at the time of integration because of Hagewood's insider knowledge of how the County's transportation tracking system operates. Although unintentional, the probability for private gain to himself or his private employer is likely to arise under the circumstances described here.

Another indication of possible divided loyalties arises when personal financial interests are involved.⁷ In this instance, Hagewood's private company would be expected to benefit financially because Hagewood's knowledge of the County's transportation tracking systems would allow him to develop tracking systems for his private clients that would be able to link with the County's transportation tracking systems therefore providing his clients an unfair advantage in bidding for municipal transportation contracts.

In conclusion, the Ethics Commission opined Hagewood should be denied permission to engage in outside employment as an IT consultant developing transportation tracking systems for a private company that provides fixed and flex transit services to municipalities because this outside employment would likely cause divided loyalties and impairment of independent judgment in the performance of his official duties as a County employee given that, within an integrated transportation system, the work he would perform for his private clients would be closely related to and intertwined with the work he performs as Senior Systems Analyst and Programmer for the County.

Furthermore, the Commission recommends that ITD establish internal policies with regard to outside employment as it is in the best position to know and understand where future conflicts may arise. Some departments that have followed this recommendation are Procurement, Aviation, and the Police Department.

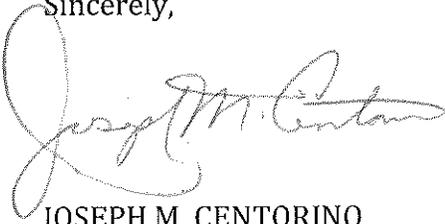
⁶ See INQ 13-88 (In order to avoid conflicts between duties to the County as the second in charge of the Property Appraiser's Office and duties to a private employer, the Deputy Property Appraiser was advised to decline outside employment as a consultant with a Colombian company developing IT programs to be used in searching property tax rolls); see also INQ 12-159 (County firefighter cannot accept outside employment with North Shore Medical Center as a healthcare liaison because the private work parallels his duties as a public employee and would, therefore, create conflicting loyalties).

⁷ See Miami-Dade County Code § 2-11.1 (n) and INQ 12-64 (a private contractor who provides training for clients of the South Florida Workforce may not also provide auditing services to the Workforce because of possible impairment of judgment in the performance of official duties and the prohibition on taking official actions when personal financial interests are involved).

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me or Gilma Diaz-Greco, Staff Attorney, if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph M. Centorino". The signature is written in dark ink and is positioned to the left of the printed name.

JOSEPH M. CENTORINO

Executive Director