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INQ 16-07 Ferguson

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**From:** Perez, Martha D. (COE)

**Sent:** Wednesday, January 13, 2016 2:59 PM

**To:** Ferguson, James (WASD) <James.Ferguson@miamidade.gov>

**Cc:** Centorino, Joseph (COE) <CENTORI@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>

**Subject:** James Ferguson, Chief of Engineering & Design Division, WASD (General Information re Two Year Rule) INQ 16-07

Dear Mr. Ferguson,

You inquire whether a former WASD employee who is presently working for an engineering consulting firm which transacts business with the County, specifically, with the County's Water & Sewer Department (WASD), has any limitations regarding his present employer's procurement activities with the County.

The Ethics Commission does not provide opinions to individuals on matters that do not pertain to them. The jurisdiction of the Ethics Commission regarding the issuance of opinions is limited by Section 2-1074(y) of the Miami-Dade County Code and Sections 2.2-2.3 of the Ethics Commission Rules of Procedure, which limit the issuance of opinions to individuals who are **personally affected by a prospective issue**.

Generally, the County Ethics Code at Section 2-11.1(q) ("Two Year Rule") does not prohibit former County employees from working for a County vendor, but it does prohibit them from engaging in a broad range of activities related to *lobbying* the County. The lobbying activities described in the "Two Year Rule" are more expansive than those found under the general lobbying ordinance. Whereas the general lobbying ordinance characterizes lobbying as advocating for items that will foreseeably be decided or recommended by the County Commission, a County board or Mayor, the "Two Year Rule" also includes in the lobbying definition advocating for decisions which may be made at the *sole* discretion of any County personnel, not necessarily a voting body or Mayor. Consequently, a former County employee may not arrange or participate in meetings, negotiations, presentations or other discussions directly with County officials or staff for the purpose of influencing any type of official action, decision or recommendation by the County. See RQO 08-28 and RQO 04-34.

The following are some examples of activities which are not considered lobbying for purposes of the "Two Year Rule":

- Imparting institutional knowledge and history of the County's capital improvement programs to the employer and its team. See RQO 12-09;
- Participating in meetings with the County on behalf of the employer to discuss County practices and procedures *as long as the meeting is held for informational purposes only and not for the purpose of influencing any recommendations or other actions on the project*. See RQO 12-09;
- Estimating project costs, *as long as there is no involvement with City officers or staff directly, through face to face meetings, telephone calls, emails, or other communications, in negotiating changes for any purpose, including negotiating change orders*. See RQO 12-09
- Providing support staff to the County through the employer, *as long as there is no attempt to influence County officials or employees regarding the terms of the arrangement*. See RQO 12-09;

- Providing management and oversight of County projects. See RQO 08-18;
- Coordinating activities between the County, outside agencies and County contractors and sub-contractors;
- Meeting with County staff and appearing before County boards and committees *provided any appearance is related to an **awarded** contract*. See RQO 11-24

I am also attaching the Ethics Commission's "FAQ's Two Year Rule (2013) for informational purposes.

Sincerely,

**Martha D. Perez**

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

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**From:** Ferguson, James (WASD)

**Sent:** Tuesday, January 12, 2016 12:44 PM

**To:** Ethics (COE) <[ethics@miamidade.gov](mailto:ethics@miamidade.gov)>

**Subject:** Questions on Two Year Rule for Former Employees

To Whom It May Concern,

The former Assistant Director of Engineering of Miami-Dade Water and Sewer Department (WASD) retired at the end of November 2015. He is apparently now working for an Engineering Consultant which does extensive business with WASD.

This consulting firm is also currently on teams competing for WASD Design-Build contracts. The former employee of WASD was involved in these projects prior to his retirement.

I have several questions/concerns:

What capacity can this former employee of WASD perform for this consultant?

What should WASD staff be aware of, as far as any activities which may be considered lobbying?

Should I notify the former employee of his work limitations or is that is responsibility?

Regards,

**James B. Ferguson, P.E.**

Chief, Engineering and Design Division

**Miami-Dade Water and Sewer Department**

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