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Via First Class Mail
and email at: lopezc@miamidade.gov

August 10, 2016

Carolina Lopez
Deputy Supervisor of Elections
Government Affairs Division
Miami-Dade County Elections Department
2700 NW 87 Avenue
Miami, FL 33172

Re: RQO 16-01

County employees who receive payment to complete online surveys do not engage in outside employment where, in a calendar year, they complete ten (10) or less such surveys, or they receive no more than \$1,000.00 per year in compensation for such activity. *See* Miami-Dade County Code §§ 2-11 and 2-11.1 (k).

Dear Ms. Lopez:

IN A PUBLIC MEETING on August 10, 2016, the Miami-Dade Ethics Commission opined that County employees who receive payment to complete online surveys do not engage in outside employment if, in a calendar year, they complete ten (10) or less such surveys, or they receive no more than \$1,000.00 in compensation for such activity.

BACKGROUND

In a previous informal opinion provided to you,¹ Ethics Commission staff opined that an employee who **actively** seeks to provide marketing services to private entities by completing online surveys in order to earn additional income would be engaging in outside employment requiring the completion of the outside employment paperwork on a yearly basis.²

¹ *See* INQ 15-14. County Financial Disclosure forms, including the County Outside Employment Statement, are filed with the County Elections department. Miami-Dade Code §2-11.1(k)(2).

² County employees who engage in outside employment must request permission to engage in outside employment on a yearly basis. Miami-Dade Code § 2-11. In addition, the County Ethics Code requires County employees who engage in outside employment to disclose the income earned in that outside employment on a yearly basis by completing the Outside Employment Statement form. Miami-Dade Code §2-11.1(k)(2).

Subsequently, you asked for additional guidance on this matter based on inquiries by County employees who asked if such activity would be considered outside employment where the employee is only completing a small number of these surveys and receiving *de minimis* compensation for their completion.

Online surveys are self-administered surveys conducted as part of market research for private entities that are seeking feedback from consumers on their goods and services.³ Individuals interested in participating in these online surveys register with one or more market research companies. The pay for completing online surveys varies, but articles on the subject indicate that payment for completing online surveys can range from 1\$ to 50\$. Payment also occurs in the form of a gift card or by entering participants into sweepstakes to earn prizes.⁴ The time required to complete online surveys can vary, but according to articles on the subject, it can take anywhere from 5 to 45 minutes.⁵

LEGAL ANALYSIS

The County Ethics Code at sections 2-11.1(j) and (k), and Miami-Dade Code at section 2-11 prohibit County employees from engaging in outside employment that will create a conflict between the employee's private interests and his or her public duties; and prohibit County employees from using County time or resources in furtherance of their outside employment.⁶ County employees that engage in outside employment are required to request permission to engage in outside employment on a yearly basis,⁷ and full-time employees file an annual report indicating the source of the outside employment, the nature of the work being done and any amount or types of money or other consideration received from the outside employment no later than 12:00 noon on July 1st of each year.⁸

The Ethics Commission has defined outside employment as "any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated."⁹ Examples of "providing services" have been defined by the Ethics Commission to include, bookkeeping, legal services, **marketing services**, and servicing clients, among others.¹⁰ Furthermore, County employees are considered to be engaging in outside employment when they are running a business whether incorporated or not and regardless of whether it is generating any income, including running an internet-based business.¹¹ Thus, employees that engage in employment outside of their County employment that is equivalent

³ Survey results are aggregated by combining responses with those provided by other participants who have also completed the online survey. This data is stored in a database that can be analyzed by clients. *See Online Survey Jobs*, Mysurvey.com, https://www.mysurvey.com/index.cfm?action=Main.lobbyGeneral&myContent=online_surveys (last visited April 21, 2016), and *Make Money Taking Online Surveys*, ABC NEWS (May 8, 2006), <http://abcnews.go.com/GMA/Consumer/story?id=1937788&page=1> (last visited April 21, 2016).

⁴ *Id.*

⁵ *Online Survey Jobs, and Make Money Taking Online Surveys, supra* note 3.

⁶ Miami-Dade Code §§ 2-11 and 2-11.1(k)(2).

⁷ Miami-Dade Code § 2-11.

⁸ Miami-Dade Code § 2-11.1(k)(2) (full-time County and municipal employees file an annual report disclosing the source of the outside employment and the amount earned).

⁹ *See* INQ 12-31.

¹⁰ *See Outside Employment Guidelines Memorandum*, Miami-Dade County Commission on Ethics and Public Trust (last amended and ratified by the Ethics Commission in September, 2014).

¹¹ *Id. at 10, See* INQ 13-34.

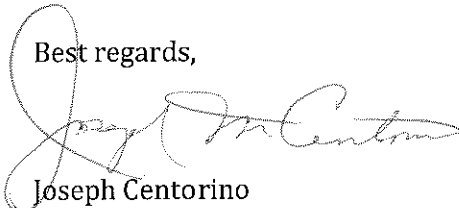
to running a private business or a second job, are generally considered to be engaging in outside employment.¹²

In contrast, the Ethics Commission has determined that sporadic or infrequent economic activities such as occasional garage sales or occasional sales on internet sales sites such as Ebay are not included in the definition of outside employment.¹³ Applying this same rationale to the issue of completing online surveys, it follows that it would not be considered outside employment where County employees complete online surveys only on an occasional or infrequent basis and would likely generate minimal compensation for providing this service. This type of activity would not require a substantial time commitment and would not tend to significantly affect a County employee's financial interests. Consequently, it would be unlikely to create conflicts of interest between a County employee's private and public duties.

In order to offer clear guidance, the Ethics Commission provided a bright line rule that includes a monetary amount **as well as** a limited number of transactions. Thus, with respect to online surveys, the Ethics Commission concluded that County employees who receive payment to complete online surveys do not engage in outside employment where, in a calendar year, they complete ten (10) or less such surveys, or they receive no more than \$1,000.00 in compensation for such activity. For example, under this guideline, an employee that completes 10 surveys in a calendar year and earns \$300.00 would not be engaging in outside employment; an employee that completes only 5 surveys but earned more than \$1,000.00, would be engaging in outside employment.¹⁴ However, under no circumstances can County employees use County time or resources to complete online surveys.

This opinion construes the Miami-Dade County Ethics Code and is not applicable to other conflicts under County or State laws. Inquiries regarding possible conflicts under State ethics laws 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.

Best regards,



Joseph Centorino
Executive Director

¹² In INQ 15-14, the Ethics Commission staff used this rationale to opine that actively pursuing opportunities to participate in online surveys by spending a significant amount of time and effort registering in multiple sites and completing surveys for multiple online marketing services (equivalent to the time spent in a second job) would be considered outside employment. This informal opinion did not address completing surveys on an occasional or infrequent basis.

¹³ See INQ 05-19 (occasional buying and selling on Ebay would not constitute outside employment) and INQ 08-24 (an employee who establishes a **commercial** enterprise to buy and sell on Ebay is engaging in OE. The key is whether the person is reselling the merchandise he/she is buying on e-bay on a regular basis. If the goods are purchased for one's personal consumption it isn't outside employment. If goods are purchased to resell and make a profit, it is outside employment) (emphasis added).

¹⁴ Conversely, completing more than 10 surveys in a calendar year, or earning more than \$1,000.00 completing these surveys in a calendar year, would constitute outside employment.