

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, October 11, 2017 9:33 AM
To: Sanchez, Rodzandra (COE)
Subject: David Frutos, Miami-Dade County Department of Solid Waste Management, Mosquito Control Supervisor (outside employment) INQ 17-241

[INQ 17-241 Frutos](#)

From: Turay, Radia (COE)
Sent: Tuesday, October 10, 2017 4:12 PM
To: Sanchez, Rodzandra (COE) <Rodzandra.Sanchez@miamidade.gov>
Cc: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: FW: INQ 17-241, David Frutos, Miami-Dade County Department of Solid Waste Management, Mosquito Control Supervisor (outside employment)

From: Turay, Radia (COE)
Sent: Tuesday, October 10, 2017 4:06 PM
To: Frutos, David (DSWM) <David.Frutos@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Marlow, Myra (DSWM) <Myra.Marlow@miamidade.gov>; Chiong, Yanet (DSWM) <Yanet.Chiong@miamidade.gov>
Subject: INQ 17-241, David Frutos, Miami-Dade County Department of Solid Waste Management, Mosquito Control Supervisor (outside employment)

Dear Mr. Frutos,

You have inquired about possible conflicts of interest between your County employment and your proposed outside employment.

Background

You are employed at the Miami-Dade County Department of Solid Waste Management (DSWM), as a Mosquito Control Supervisor. Your County job duties include making sure the inspectors are conducting Miami-Dade residential and commercial service request inspections properly; providing inspectors with chemicals and equipment to properly inspect and treat mosquito breeding sites; inputting and approving time for County inspectors in EPAR; conducting inventory audits of the chemical room, Hanger, and mechanics shop; and conducting on-the-job training.

You are seeking to engage in outside employment as the owner of Florida Coast Pest Control. In your role as owner you will conduct general pest control for residential and commercial customers (i.e. rodent control, roaches, ants, flies, bed bugs, ticks, fleas, bees, wasps, storage product pests, spiders, bird control). You will not compete for any County contracts; nor will you service any County contract for a client.

Legal Analysis

The Miami-Dade County Ethics Code at Section 2-11.1(j), prohibits *conflicting* outside employment: "No [County employee] shall accept other employment which would impair his or her independence of judgment in the performance

of his or her public duties.” See also AO 7-1 (County’s administrative order reiterates that, “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”). The Ethics Ordinance is intended to prevent both corrupt behavior and an appearance of corruption where a public employee may be perceived as having conflicting loyalties that interfere with his or her independence of judgment in making a decision or recommendation connected to his or her official duties. See INQ 15-49. Additionally, State law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between his private interests and the performance of his public duties. §112.313(7)(a), Fla. Stat. With respect to County employees, approval to engage in outside employment is at the discretion of the employee’s supervisor, who may consider whether an appearance of impropriety exists. See INQ 15-22.

In general, if an employee’s outside employment is totally unrelated to his/her County employment, conflicts would generally not arise. In previous opinions, the Ethics Commission has found that outside employment conflicts with government employment *when the two pursuits overlap or are closely related*. See RQO 12-11, INQ 12-159. For example, in RQO 15-03, the Commission found that an IT Senior Analyst should not be permitted to engage in outside employment as an IT consultant for a private client because the outside employment was closely related to the work he performed for the County, and divided loyalties were likely to develop between his County employment and his private employment.

Conflicting outside employment has also been found in the following situations:

- *When the County employee works in a position where he/she has the opportunity to recruit members of the public to use his/her outside employment; the County employee has access to non-public information which may become relevant to his/her private employer.* For example, in RQO 99-50, the Ethics Commission opined that an Airport employee should not be allowed to engage in outside employment with an Airport contractor because the outside employment might improperly affect his relationships with his County co-workers and might induce him to use confidential information to benefit his private employer;
- *When the County employee’s private outside employment may place him/her in a situation where his/her private economic considerations may override the faithful discharge of his/her County duties.* See RQO 15-03.
- *If the County employee provides services for County residents in his/her County department and then provides services for the same County residents in his/her outside employment;*
- *If the County employee were to solicit business for his/her outside employment while working at the County department.* Of equal concern would be if other County personnel refer County residents to the County employee. See §2-11.1(p), County Ethics Code; INQ 07-94.

I have attached the Ethics Commission “Outside Employment Guidelines” Memorandum (September 2014), which outlines a number of additional fact patterns that may create conflicting employment. These are examples of situations which indicate a conflict between the County’s interests and the outside employment. However, A County department may also impose stricter guidelines on outside employment than are found in the County Ethics Code, Ethics Commission guidelines or opinions.

After a review of all of the facts presented, it appears that the type of outside employment that you will be conducting is “closely related” to your public duties. Additionally, you will use similar resources in your outside employment that you use in your public position; you will provide services for County residents in your County department and then potentially provide services for the same County residents in your outside employment; and in your role as supervisor of the inspectors that are conducting service request inspections, you will have the opportunity to solicit business for your outside employment while working at the County.

Based on the above listed factors, as the type of outside employment could impair your independence of judgment in the performance of your public duties, should your supervisor approve your request for outside employment, please note that the following **limitations will apply**:

- You may not conduct your pest control service in Miami-Dade County.
- Florida Coast Pest Control may not have any business relationship with County residents and commercial businesses located in the County that call or contact DSWM regarding mosquito control service requests.

- Although you have access to the same or similar resources in the County as you utilize in your private business, you may not utilize any of the County’s tools or resources in your outside employment;
- Florida Coast Pest Control may not contract or attempt to contract with the County and/or DSWM;
- You may not use County time or resources in the furtherance of your outside employment. See, Miami-Dade Code § 2-11.1(g).
- You are prohibited from using any confidential information acquired as a result of your County employment to derive a personal benefit. See Miami-Dade Code § 2-11.1(h); and
- You cannot represent Florida Coast Pest Control or any of its clients in any matter before the County. See Miami-Dade Code § 2-11.1(m)

Furthermore, we remind you that all county employees engaged in outside employment must obtain permission to engage in that employment on a **yearly** basis. Miami-Dade Code § 2-11, Administrative Procedure 7-1, and Procedure 403. Full-time County employees are also required to file an Outside Employment Statement on a **yearly** basis. See Miami-Dade Code § 2-11.1(k)(2).

This opinion is based on the facts presented. If these facts change or if you have any further questions, please contact us.

Sincerely,

RADIA TURAY

Staff Attorney
 Miami-Dade Commission on Ethics and Public Trust
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From: Frutos, David (DSWM)
Sent: Wednesday, September 20, 2017 2:06 PM
To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: RE: Outside Employment Request

- 1) I'm a mosquito control supervisor. My responsibilities here in Mosquito Control are:
 - A) Make sure the inspectors are conducting service request inspections properly.
 - B) Provide the inspectors with chemicals and equipment to properly inspect and treat mosquito breeding sites.
 - C) Input and approve time for my inspectors in EPAR.
 - D) Conduct inventory audits of the chemical room, Hanger, and mechanics shop.
 - E) Conduct on-the-job training.
- 2) Public Health Applicators License.
- 3) No. I have a separate license called GHP(General Household Pest Control)
- 4) No
- 5) I own the company. I conduct general pest control services for residential and commercial properties(i.e. rodent control, roaches, ants, flies, bed bugs, ticks, fleas, bees, wasps, storage product pests, spiders, bird control)
- 6) The opportunity is there but I conduct my personal business outside of my regular work schedule.
- 7) No, I have my own equipment and I purchase my chemicals at Univar (chemical distributor).
- 8) For anyone who has pest control issues.

- 9) No
- 10) 700am-330pm (Mon-Fri)
- 11) After work or on the weekends mostly.
- 12) No
- 13) Dade and Broward.
- 14) No

From: Turay, Radia (COE)
Sent: Monday, September 18, 2017 5:10 PM
To: Frutos, David (DSWM) <David.Frutos@miamidade.gov>
Subject: Outside Employment Request

Hello Mr. Frutos,

My name is Radia Turay. I am a staff attorney at the Miami-Dade Commission on Ethics and Public Trust. I was assigned to assist you with your outside employment request. Please give me a telephone call at 305-350-0601 when you get a chance.

Further, please provide responses to the following questions at your earliest convenience:

- 1) Please describe your responsibilities at the County?
- 2) Do you have any specific licenses that are necessary for your county employment
- 3) Will you utilize the same licenses in your outside employment
- 4) Does the County pay for you professional licenses if applicable
- 5) Please describe your duties and responsibilities as the owner of Florida Coast Pest Control (FCPC)?
- 6) Do you work in a position with the County that you have the opportunity to recruit vendors, contractors, bidders, or members of the public to use your outside employment product or services?
- 7) Will you use the same resources /tools/equipment in your outside employment as you do at the County
- 8) For whom will FCPC perform services?
- 9) Will FCPC perform work for any county vendors?
- 10) What are your hours at the county?
- 11) When will you perform your duties in your proposed outside employment
- 12) Would you need to pull any permits in your outside employment
- 13) What counties do you intend to perform your outside employment
- 14) Does FCPC have any other employees other than yourself

Thank-you for your anticipated cooperation.

RADIA TURAY

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