

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, April 30, 2018 4:02 PM
To: Sanchez, Rodzandra (COE)
Subject: Scott Aguiar, Project Inspector II & Code Enforcement, WASD (Two-year rule (q)) INQ 18-109

INQ 18-109 Aguiar

From: Turay, Radia (COE)
Sent: Monday, April 30, 2018 3:47 PM
To: Aguiar, Scott A. (WASD) <Scott.Aguiar@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: INQ 18-109, Scott Aguiar, Project Inspector II & Code Enforcement, WASD (q)

Dear Mr. Aguiar,

You inquire regarding ethics restrictions that may apply to you following your retirement from the Miami-Dade Water & Sewer Department (WASD), specifically as it relates to you potentially working as a consultant for a Construction Management Company that is a County vendor/contractor.

Background

You are currently employed by the County as a Project Inspector II & Code Enforcement, in the Utility Development Division of the Donation Inspection Unit at WASD. Your current duties and responsibilities include ensuring contractors for developers of property lots comply with WASD standards and specifications. You document their progress, ensure that they follow the approved plans, use approved materials, and assist with guidance during conflicts. You also coordinate WASD in-house activities that are incorporated in the overall scope of work of the project to complete it in its entirety. It is your job to help the contractors meet their schedules, while trying to get the best product for incorporation into our water & sewer systems. You inspect all testing to ensure that WASD obtains the highest possible quality of product.

You will be retiring soon and you are considering obtaining employment as a consultant for a Construction Management company that inspects compliance of projects on behalf of the County. You do not currently oversee any work conducted by the construction management companies. You do not have an offer from any particular company at this time. You however anticipate that as a consultant with a Construction Management Company you would do essentially the same type of tasks as you did in your County job except that you would not work with the developers of property lots that you oversee currently, instead you will work for a construction management company.

Analysis

Generally, Section 2-11.1(q) -The "Two-Year Rule"- does not prohibit a former County Employee from **working** for a County vendor, but it prohibits former County employees from engaging in a broad range of **lobbying** activities such as arranging, representing or participating in any meetings, negotiations, presentations, interactions or other discussions with County officials, personnel or employees, in attempt to influence or persuade the official or employee to take any type of official action for a period of two years after their separation from County employment. See Section 2-11.1(s) County Ethics Code and RQO 06-32.

Under the Two-Year Rule, lobbying activities are defined more broadly than the general lobbying ordinance, Section 2-11.1(s), and include activities intended to influence **any** official determination, regardless of whether the determination will foreseeably be decided or recommended by any of the County's commissions, boards, committees or the Mayor, because unlike the general lobbyist ordinance, the post-employment ordinance expands the definition of lobbying to include advocating for decisions that may be made at the sole discretion of individual County personnel, not necessarily a voting body. See RQO 06-32 and RQO 12-09. This would also cover any activity where the employee attends meetings and is publicly identified as part of a lobbying team employed by the principal. See RQO 01-38.

The County Ethics Commission has provided guidance on permitted and prohibited interactions by former County employees (RQO 12-09):

- 1) Former County employees may respond to questions, particularly regarding technical information, but may not attempt to influence the decision of an evaluation committee;
- 2) Former County employees may participate in informational meetings with the County on behalf of private employers or private clients to discuss County practices and procedures and matters related to the former employee's professional knowledge of the County and the industry or activity in question, but may not meet with County and staff, if meetings are convened for the purpose of influencing elected officers and/or County employees to take an official action or make an official decision;
- 3) Former County employees may discuss contract terms, conditions and compensation strategies with the private employer and its professional partners, but may not participate in negotiations or other discussions directly with County officers or staff because these actions are characterized as seeking to influence elected officers and/or County employees to take an official action or make an official decision.

ROQ 12-09 also specified activities that are **not** considered lobbying under the two-year rule. They include reviewing construction documents for constructability; imparting institutional knowledge and history of County capital projects to team members of the private employer; providing support staff to the County through the private employer and partners, as long as there is no attempt to influence County officers or personnel regarding the terms of an arrangement; developing and executing a program to encourage public input; identifying expert witnesses and others to assist with reviewing claims and litigation matters; and estimating costs, as long the former employee has no involvement with County officers and staff directly, through face-to face meetings, telephone calls, emails, or other communications, in negotiating changes for any purpose, including negotiating change orders.

Additionally, it is important to note that under Section 2-11.1(h) of the County Ethics Code ("Confidential Information"), provides that a former County Employee is prohibited from disclosing confidential information gained through one's official position with the County or the use of such information, directly or indirectly, for personal gain or benefit. Thus, if the decision-making process on the services that the Construction Management firm provides to the County is related to work you formerly performed for the WASD, you should consider whether you have access to confidential information through the time period of your County service which may give you an advantage in the Construction management firm's dealings with the County. See INQ 16-109.

To summarize, although the two-year rule does not prohibit you from working for a County vendor/contractor, you must abide by the prohibitions on lobbying under Section 2-1.11(q) of the County Ethics Code and County Ethics Commission opinions. Furthermore, we advise that former employees should carefully consider the totality of the circumstances before taking action that could possibly erode the public's trust. See INQ 13-197.

This opinion is based on the facts as presented. If any of the facts you have presented change or if you have further questions, please do not hesitate to contact us.

Sincerely,

RADIA TURAY

Staff Attorney

Miami-Dade Commission on Ethics and Public Trust

19 W. Flagler Street, Suite 820

Miami, FL 33130

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From: Aguiar, Scott A. (WASD)

Sent: Monday, April 23, 2018 11:34 AM

To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>

Subject: RE: Ethics Question

Hello Ms. Turay,

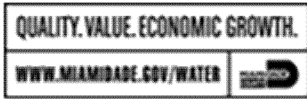
I am a Water & Sewer Project Inspector II.

1. I am responsible for ensuring contractors' compliance with WASD standards & specifications. I document their progress, ensure that they follow the approved plans, use approved materials, and assist with guidance during conflicts. I also coordinate WASD In-House activities that are incorporated in the overall scope of work of the project to complete it in its entirety. It is my job to help them meet their schedules, while trying to get the best product for incorporation into our water & sewer systems. I inspect all testing to ensure that WASD obtains the highest possible quality of product.
2. This is actually for my own edification, and possible consideration if the right offer materializes. The management companies do exactly the same thing but are also responsible for paying the contractor for their work. Their projects are broken down into various work line items. They pay the contractor for what he does until the ultimate termination of the contract. I did exactly the same thing when I was an Inspector for WASD's Construction Management Division. Now I am with the Utility Development Division where the developers are paying the contractors. I can't control with payment, but instead use my Code Enforcement badge.
3. No I oversee contractors for developers of property lots, that eventually connect to our mains in the public right-of-way. The management companies put projects out for bid. Their work is only done in the public right of way. They deal with money that WASD gives them to design, manage, and inspect. In my current position, I deal with no money.
4. I would be doing essentially the same thing except that I would have less projects, more oversight, and more control over the quality of the finished product. My job description is basically detailed in the answer for number one.
Both my position and the work that their inspectors are doing is essentially the same. Although, I know for a fact that their inspectors are not as familiar with our standards, specs, and manner of operation.

Hope this was helpful,

Scott A. Aguiar, Project Inspector II
& Code Enforcement
Donation Inspection Unit
Miami-Dade Water and Sewer Department

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From: Turay, Radia (COE)
Sent: Monday, April 23, 2018 10:55 AM
To: Aguiar, Scott A. (WASD) <Scott.Aguiar@miamidade.gov>
Subject: RE: Ethics Question

Hello Mr. Aguiar,

It's Radia Turay again. I spoke to you briefly regarding your request for an ethics opinion. I am in the process of drafting a response to your question and would appreciate if you could kindly answer the questions below:

- 1) What are your current responsibilities at WASD
- 2) Does the construction management company that you are considering have a current contract with WASD
- 3) Do you currently oversee their work in your county position
- 4) What describe your position and what your job duties/responsibilities will be for the construction management company

I have attached two of our most recent opinions regarding this issue for your information. Please also find the link to the CEO guidelines regarding this issues below.

http://ethics.miamidade.gov/library/Publications/faq_2-year-rule_6-14.pdf

I look forward to hearing back from you.

Thanks,
Radia.

RADIA TURAY

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Miami-Dade Commission on Ethics and Public Trust
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From: Ethics (COE)
Sent: Thursday, April 05, 2018 1:40 PM

To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>

Subject: FW: Ethics Question

Please handle.

From: Aguiar, Scott A. (WASD)

Sent: Thursday, April 05, 2018 1:38 PM

To: Ethics (COE) <ethics@miamidade.gov>

Subject: Ethics Question

To whom it may concern,

First of all I apologize if I am not presenting this question in the proper procedure. This is my first time having an ethical question in 22 years of employment.

I have heard from fellow employees that retire and wish to become contractors, that there is a period on time that they must wait before doing so. It is my understanding that it is because they are now in an adversarial or competing nature of work, for lack of a better word. Does this time requirement apply to people who may wish to work for a consultant that is working in behalf of the county? For example, Construction Management companies that inspect compliance of projects on behalf of the county?

Thank you for your time,

Scott A. Aguiar, Project Inspector II

& Code Enforcement

Donation Inspection Unit

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