

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, October 15, 2018 9:06 AM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-227, Michelle Samaroo, Assistant City Attorney, City of Opa Locka (Limitations on Contracting (c), and Conflict of Interest (g))
Attachments: INQ 18-227.pdf

INQ 18-227 Samaroo

From: Arrojo, Jose (COE)
Sent: Thursday, October 11, 2018 3:40 PM
To: Michele Samaroo <msamaroo@Opalockafl.gov>
Cc: Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 18-227

Dear Ms. Samaroo:

As requested. Please do not hesitate to contact us should you need any further assistance.

Best regards,

Jose J. Arrojo

Executive Director
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Jose.Arrojo@miamidade.gov
Tel: (305) 579-2594
Fax: (305) 579-0273
<http://ethics.miamidade.gov/>





MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Michele Samaroo
Assistant City Attorney
City of Opa Locka, Florida

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 18-227, Purchase of Municipal Property by Elected Official

DATE: October 11, 2018

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts: You have advised that Opa Locka Commissioner Timothy Holmes would like to purchase his currently assigned municipal vehicle. You note that Chapter 2, Article VI, §2-322 of the Code of the City of Opa Locka allows the Manager to sell property determined by her to be obsolete and unusable if the value is less than \$250. If the value of the property is above \$250, the Manager must obtain an appraisal of the property's value and thereafter certify that its sale is in the best interest of the City. If the appraised market value is above \$2,500, then the Manager must obtain Commission approval prior to sale. The code is silent as to the manner of sale.

Discussion: The Miami-Dade Conflict of Interest and Code of Ethics Ordinance, found at §2-11.1, Code of Miami-Dade County, applies to Opa Locka City Commissioners. Also, the Ethics Code contains several provisions that are implicated by the proposed sale of municipal property to the Commissioner. §2-11.1(b) of the Ethics Code applies to sales of goods or services by municipalities. §2-11.1(c) of the Ethics Code, with very limited exceptions, prohibits elected officials from transacting any business with their cities.

The exceptions to the limitation on transacting with the city are contained in §2-11.1(c)(2) through (c)(6) of the Ethics Code. The exceptions allow employees; autonomous, advisory and quasi-judicial personnel, under certain circumstances, to transact in business with the city. Those exemptions do not apply to elected commissioners.

The only exception that would allow for Commissioner Holmes to purchase his assigned vehicle from the City would be if he purchased it at public auction or some like procedure as is contemplated in §2-11.1(c)(5) of the Ethics Code. I understand that the City of Opa Locka is not obligated to sell city property at public auction or to use a similar procedure, but in my opinion, Commissioner Holmes would be prohibited from engaging in this transaction with the City of Opa Locka, unless he successfully purchases the car in this manner.

To be clear, if the City of Opa Locka chooses to sell his assigned vehicle at public auction, then §2-11.1(g) of the Ethics Code prohibiting exploitation of official position would be implicated. Commissioner Holmes may not use his official position to secure any special privileges for himself as part of the sale of the vehicle by the City of Opa Locka. This means that there should be appropriate firewalls and procedures in place so that the Commissioner could not obtain special benefits, advance notice, or opportunities in the auction process that are not available to all interested bidders.

Also, §2-11.1(h) of the Ethics Code prohibits the Commissioner from using or disclosing directly or indirectly any confidential information obtained through his official position. So, again, if Commissioner Holmes came to obtain any confidential information regarding the auction process because of his public position, he would be precluded from disclosing it or using it, directly or indirectly for his personal gain at auction.

Opinion: Commissioner Holmes may not engage in a business transaction consisting of the sale and purchase of his municipally assigned vehicle as such is prohibited by §2-11.1(c) of the Ethics Code unless the City uses a public auction or similar process as is contemplated in the exception to the general bar on these transactions and described in §2-11(c)(5) of the Ethics Code.

In addition to this opinion, you may wish to refer to INQ 11-157 and INQ 18-77, for further guidance on public auction procedures and participation by specified public employees or officials.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.