

Sanchez, Rodzandra (COE)

From: Arrojo, Jose (COE)
Sent: Monday, December 24, 2018 10:51 AM
To: Vincent Brown
Cc: Murawski, Michael P. (COE); Perez, Martha D. (COE); Turay, Radia (COE); Diaz-Greco, Gilma M. (COE); Sanchez, Rodzandra (COE); Ross, Rachelle (COE)
Subject: INQ 18-265, Gifts of Municipal Property to Former Officials, Sections 2-11.1 (c) and (q)
Attachments: INQ 18-265, GiftsMunicipalPropertytoFormerOfficials, Sections c q.pdf

Dear Mr. Brown:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust regarding the possible gifting of a municipally owned vehicle to a former elected commissioner.

Attached is INQ 18-265, addressing the applicability of the Code of Ethics to the contemplated transaction.

It was good to meet with you last week to discuss this matter.

Again, thank you for contacting the Ethics Commission and best wishes for the end of the year holidays.

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: Vincent T. Brown, Esq.
City Attorney
City of Opa Locka, Florida

FROM: Jose Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 18-265, Purchase or Gift Receipt of Municipal Property by Former Elected Official, Sections 2-11.1(c) & (q)

DATE: December 24, 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: The City of Opa Locka, Florida previously provided a municipally owned vehicle to an elected commissioner. While serving as an elected official, the commissioner had sought to purchase his vehicle from the municipality. In INQ 18-227, we opined that the commissioner could not engage in a business transaction consisting of the sale and purchase of his municipally assigned vehicle as such is prohibited by Section 2-11.1(c) of the Miami Dade Conflict of Interest and Code of Ethics Ordinance (Ethics Code), unless Opa Locka used a public auction or similar process as is contemplated in the exception to the general bar on these transactions and described in Section 2-11(c)(5) of the Ethics Code.

Now, the City of Opa Locka is contemplating gifting the municipally owned vehicle to the former commissioner.

Discussion: Section 2-11.1 (c) of the Ethics Code prohibits certain categories of persons from transacting business with their municipality. The categories of persons are detailed in Section 2-11.1 (b) of the Ethics Code and elected commissioners are included in subsection (b)(1). The greatest limitations on transacting business with their municipality are placed on subsection (b)(1) elected officials.

It is for this reason, that INQ 18-227 was previously issued regarding a proposed sale by the City of Opa Locka of municipally owned vehicles to two, then serving, elected commissioners. We opined at that time that the sale and purchase of the municipally owned vehicles was a prohibited business transaction between the elected commissioners and their municipality. We did suggest that if the City of Opa Locka used a public auction method to sell the cars, then the commissioners could bid equally with others and purchase the vehicles if they did not use confidential information obtained as commissioners relating to the auction.

The City of Opa Locka is considering gifting a vehicle to one of the previously serving commissioners who is no longer in office. Because the commissioner is no longer in office, nor is he employed by the municipality, then he is not a covered person under Section 2-11.1 (b) of the Ethics Code. Accordingly, the prohibited business transaction limitation of Section 2-11.1 (c) is inapplicable.

In prior communications with municipal counsel on this matter, we commented on Section 2-11.1 (q) of the Ethics Code that prohibits certain categories of elected officials and employees from transacting with their former municipalities for two years after leaving office or employment. However, that two-year ban applies to lobbying activities and is not expansive enough to capture more generalized business transactions like the sale and purchase or gifting of a municipally owned vehicle

To be clear, the lobbying restrictions contained in two-year lobbying ban on former officials or employees in subsection (q) of the Ethics Code is more restrictive than the limitations contained in Section 2-11.1 (s), the general lobbying subsection. So, for example, the Commission on Ethics has opined that a former municipal employee may not attempt to influence *any* official decision or action of the municipality regardless of whether the action will foreseeably be heard or reviewed by the city commission, a city board or city committee, or by the city manager throughout the two years following city employment. (*See* RQO 12-09)

Thus, the former commissioner may purchase the vehicle from the municipality or he may receive the vehicle as a gift. Neither of these transactions would run afoul of the Ethics Code. He should however exercise caution regarding his efforts to secure the former vehicle as a purchase or gift, as his activities could violate the two-year lobbying ban imposed in Section 2-11.1 (q).

This opinion does not comment on: whether it is a wise policy decision for the City of Opa Locka to sell or gift the vehicle to the former commissioner; the proper manner or procedure to facilitate the transfer; or any restrictions to the transfer imposed by outside oversight entities.

Opinion: The former elected commissioner may purchase the vehicle from the municipality or he may receive the vehicle as a gift since these business transactions would not be prohibited by Section 2-11.1(c) of the Ethics Code. However, he should exercise caution regarding his solicitations because he is limited by the two-year lobbying ban imposed in Section 2-11.1 (q).

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.