



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Penny Harris
Tax Record Specialist II
Tax Collector Division, MDC Finance Department

FROM: Martha D. Perez,
Staff Attorney

SUBJECT: INQ 19-101, Section 2-11.1(j), County Ethics Code, Conflicting employment

DATE: October 28, 2019

CC: COE Legal Staff

Thank you for contacting the Commission on Ethics and Public Trust and seeking our guidance in connection with your requested outside employment.

Facts

You are currently employed as a Tax Record Specialist assigned to the Tax Collector/Business License Division of the County's Finance Department. Your job duties consist of processing and approving new and existing local business tax receipt applications.¹ While you do not have person-to-person contact with the applicants, you may on occasion contact them to request additional information/documents. You approve the applications, unless an application merits the review and approval of your supervisor. You state that you do not review any federal tax forms or tax information in this position.

You are the President of Unity Tax Inc., a for-profit company incorporated in the State of Florida. You prepare personal and business federal tax returns, including amendments. You advise that your current private clients *are not* County applicants you have encountered in your County employment. You also assert that you *do not and will not* utilize any County resources to conduct your outside employment.

¹ A business tax receipt is synonymous to an occupational license.

You have also indicated that you believe you may be considered a County vendor *because* you offer your private services to other County employees.

Your immediate supervisor has indicated that your request has been previously approved.

Analysis

As you know, permission to engage in outside employment requires approval from your department director. *See* Section 2-11, Miami-Dade County Code; A.O. 7-1. When determining to grant permission to engage in outside employment, your supervisor may ask the Ethics Commission for an opinion regarding potential conflicts of interest with your current or proposed outside employment. *See* INQ 13-28

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits conflicting employment.² This provision of the Ethics Code 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 connected to his or her official duties.³ 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.⁴

While your County duties do not appear to directly conflict with your private federal tax preparation services, conflicting employment may be found where the County employee solicits or intends to solicit business for her outside employment while working at her County department. *See* INQ 07-94.⁵

You have stated that you believe you are a County vendor *because* you solicit your services to other County employees. A County vendor is described as a person or entity transacting business with the County, not its individual employees. I will assume for the moment that your company is not contracting with the County. Hence, on the matter regarding the solicitation of services for your private business, it would be improper for you to do the following: mention your private business to County applicants you come in contact with as a Tax Record Specialist; work with clients in your outside employment who are engaged in the County's business application process or seeking business license approvals⁶; and/or, offer your services as a tax preparer to *anyone*

² *See also* A.O. 7-1

³ *See* INQ 15-49

⁴ *See* INQ 15-22

⁵ Of equal concern would be if other County personnel acquainted with your outside work, refer County applicants to your private business. *See* Section 2-11.1(p), County Ethics Code

⁶ *See* RQO 05-15

during County working hours, including co-workers and other County employees, as this would suggest an exploitation of your official position. See Section 2-11.1(g), County Ethics Code ⁷

Provided you can abide by the aforementioned assurances, the following additional limitations may also serve to avoid a conflict:

- You may not represent or make any presentations to County personnel on behalf of Unity Tax Inc., or on behalf of any of your private clients. Section 2-11.1(m)(1)
- You may not disclose confidential information acquired by reason of your County position or use that information for personal gain or benefit or for the benefit of Unity Tax Inc. Section 2-11.1(h)
- You may not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or the use of County resources, including computers, County software or databases, in furtherance of your private business. Section 2-11.1(g); A.O. 7-1
- You must obtain permission to engage in outside employment on an annual basis by completing the online process as you have done in this instance and completing the Outside Employment Statement with the County's Election Department. Section 2-11.1(k)(2)

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.

⁷ Pursuant to Section 2-11.1(g) of the County Ethics Code, no County employee may use or attempt to use her official position to secure special privileges or exemptions for herself or others.