



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Javier Gutierrez
Senior Director, Physician Services Department
Jackson Health Systems (JHS)

FROM: Martha D. Perez,
Staff Attorney

SUBJECT: INQ 19-105, Section 2-11.1(c)(3), Transacting Business with the County
(JHS/PHT), County Ethics Code

DATE: October 28, 2019

CC: COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance the application of Section 2-11.1(c) of the County Ethics Code to JHS's subleasing of medical space from a JHS employee.

Background

You advise that JHS has fully employed a physician who currently leases medical space in his private practice in Miami-Dade County. The physician has a current ten-year lease with the Landlord. JHS would like to enter into a sublease agreement with the physician to cover the rent.

Analysis

The County Ethics Code is preventative in nature. The conflict of interest provisions in the Code deal with, *inter alia*, situations where a County employee's private business arrangement or relationship with the County could compromise his or her public duties. This office has consistently recommended that, in order to avoid an appearance of impropriety, a County employee should scrupulously separate his or her County duties from his or her private interests in any interactions with the County employee's department.

As a JHS employee, the physician is subject to the jurisdiction of the County Ethics Code as it applies to County employees who are transacting business with the County, including entering into sub-lease agreements with JHS/PHT. *See* Section 25-A-9, Miami-Dade County Code; Section 2-11.1(c)(1), County Ethics Code

A sub-lease agreement is an involved transaction creating privity of contract between the Tenant/ Lessor and the Sub-Lessee where the Tenant remains liable for the rent while he collects it from the Sub-Lessee. Where the Lessor is a County employee and the Sub-Lessee is the County department where he works, such an arrangement falls within the transactions contemplated by the County Ethics Code at Section 2-11.1(c).

The County Ethics Code at Section 2-11.1(c)(1) prohibits a County employee from entering into any contracts or transact any business in which he has a financial interest, direct or indirect, with the County or its agencies. Section 2-11.1(c)(2) allows JHS employees to transact business with the JHS/PHT in certain circumstances and if the following criteria are met: (1) entering into the transaction would not interfere with the full and faithful discharge by the employee of his County duties; (2) the employee will not participate (directly or indirectly) in the award of the contract; and (3) the employee's job responsibilities and job description will not require him to be involved in the enforcement, administration or oversight of the contract.

While this may be considered a unique circumstance, it does not meet the criteria which allows the physician employee to enter into the sublease agreement with his employer JHS/PHT.

In INQ 13-125, this office considered a similar situation where a physician employed by the PHT was considering renting office space he jointly owned with his wife, to the PHT. We concluded that such arrangement was prohibited under Section 2-11.1(c) of the County Ethics Code. *See also*, INQ 13-127 ¹

In a comparable COE investigation, a former Miami-Dade County Commissioner leased his district office space in a building owned by his parents' corporation. This office concluded that, although the lease arrangement "was clearly prohibited under Section 2-11.1(c) of the Miami-Dade County Conflict of Interest and Code of Ethics, Section 2-11.1(c)(6) provide[d] for a waiver of the conflict which [the Commissioner] did, in fact, receive." *See* K 14-012

Based on the facts as presented herein, the JHS employee physician would be prohibited from entering into a sublease agreement with JHS/PHT (and vice-versa), the County department/entity which employs him. However, the PHT Board may grant a waiver of this prohibition with a 2/3 vote upon a finding that such transaction would be in the best interest of JHS/PHT. *See* Section 2-11.1 (c)(4).²

¹ In INQ 13-155, the employee of a County service provider, under the jurisdiction of the County Ethics Code, was prohibited from entering into a rental contract with the service provider unless the prohibition was waived by a 2/3 vote of the County provider's board of directors pursuant to Section 2-11.1(d) of the County Ethics Code.

² For informational purposes, the matter concerning the COE investigation cited herein, was presented to the BCC in a resolution authorizing the execution of a Lease Agreement with the landlord, for the space, and specifically authorizing a waiver of Section 2-11.1(c) of the Conflict of Interest and Code of Ethics ordinance. *See* Agenda Item No. 5 (E), before the BCC, January 22, 2014

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.