



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Thomas B. Davis, Esq.,
Director of Policy and Legislation

Joanie Quintanilla-Beyer, Non-Voting Chairperson,
Internal Services Department

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-109, [Voting Conflict of Interest § 2-11.1(v); Appearance of
Impropriety]

DATE: October 28, 2019

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: We have reviewed your memorandum dated October 11, 2019, prepared in connection with the Appointment of Selection Committee for Miami-Dade Corrections and Rehabilitation Department (MDCR) Request for Proposals for Inmate Commissary and Banking & Staff Self-Service Supermarket Program – RFP No. 01207. The memorandum was prepared in connection with Resolution No. R-449-14, directing the Office of the Commission Auditor (OCA) to conduct background checks on members serving on evaluation/selection committees.

The memorandum noted that a non-voting member appointed to the selection committee made disclosures on her neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, Jacqueline Payne stated on her neutrality/disclosure form that her daughter, Stephanie Rawls, was employed by Aramark from March 2017 to August 2017. Aramark is a consultant on this project.

We have conferred with Ms. Payne regarding the disclosures on her neutrality/disclosure form. She stated that she is the Commissary Supervisor at MDCR. She has been so employed for thirty (30) years. She has no ownership interest or other formal or financial

ties with any of the respondent firms to this solicitation. She has a professional relationship (not close friendship) with Aramark employees that she interacts with through her County position. She does not serve as an officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, of any of the respondent firms to this solicitation.

Ms. Payne did however confirm the information listed in her neutrality affidavit. Ms. Payne explained that her daughter, Stephanie Rawls, worked for Aramark as a pick/packer/processor of commissary orders, from March 2017-August 2017. Ms. Rawls has not worked for Aramark in any capacity since August 2017.

Ms. Payne explained that her daughter's separation from Aramark was amicable. The daughter, Ms. Rawls, left Aramark because she found a new job. She currently works for the post office. Ms. Rawls does not have any ownership interest or other formal or financial ties with Aramark. She does not maintain any close friendships with any employee at Aramark.

Ms. Payne indicated that she believes she can be fair and impartial when evaluating the various respondents to this solicitation.

Discussion: This agency conducts reviews of these issues under Section 2-11.1(v) of the County Ethics Code, which governs voting conflicts by members of County advisory and quasi-judicial boards. We also consider whether there is an appearance of impropriety created and make recommendations based on R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

Section 2-11.1(v) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary or (ii) stock holder, bondholder, debtor or creditor.

In this case, it does not appear that Ms. Payne has a voting conflict under Section 2-11.1(v) of the Code, because as a non-voting member of the selection committee, she will not vote. However, please note, that even if Ms. Payne was voting member of the committee, she would not have any voting conflict under Section 2-11.1(v) of the Ethics Code because she will not be directly affected by the vote and she does not have any of the enumerated relationships with the respondents to the project.

As noted above, due to the sensitivity of the procurement process and the need to preserve public confidence in it, this agency also opines whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an appointed selection committee. *See* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

Various formal and informal opinions issued by the Ethics Commission have recommended that an individual should not serve on a selection committee if their immediate family member works for or has a financial interest in one of the responding firms. For example, in INQ 17-131, the COE advised that a County employee exercising their discretion over approval of a sub-contractor, where the employee's son worked for the sub-contractor, could be perceived as exploitation under the Ethics Code.¹

Also, in INQ 17-214, the Ethics Commission recommended that an individual not serve on a selection committee where his brother-in-law was the owner and principal of one of the sub-consultants for a responding prime contractor, even though it was not specifically prohibited by the Ethics Code.

However, neither of the previously mentioned opinions apply to this case because (1) Ms. Payne's daughter is not a current officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary of any of the respondents to this solicitation, as she stopped working for Aramark over two years ago; and (2) unlike the individual in INQ 17-214, Mr. Payne's daughter does not have any ownership or financial interest in Aramark or any of the other respondent firms.

Opinion: Consequently, Ms. Payne does not have a voting conflict under Section 2-11.1(v) of the Code, because as a non-voting member of the selection committee, she will not vote. However, please note, that even if Ms. Payne was voting member of the committee, she would not have any voting conflict under Section 2-11.1(v) of the Ethics Code because she will not be directly affected by the vote and she does not have any of the enumerated relationships with the respondents to the project.

Further, it does not appear that her daughter's prior employment with Aramark, a consultant to this solicitation, would create an appearance of impropriety that would justify the removal of Ms. Payne from this selection committee, because her daughter is no longer an employee of Aramark, and the daughter does not have any ownership interest or other financial interest in the entity. *See* INQ 18-21, INQ 18-259, and INQ 19-14.

¹ The County Ethics Code at Section 2-11.1(g) titled, "Exploitation of official position prohibited," states that County employees, County officials, and County advisory board members shall not use or attempt to use their official position to secure special privileges for themselves or others.

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.

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Monday, October 28, 2019 4:13 PM
To: Anderson, Machell (COE); Sanchez, Rodzandra (COE)
Subject: FW: INQ 19-109, Thomas Davis, Esq., Director of Policy and Legislation, Office of the Commission Auditor [Appearance of Impropriety]
Attachments: INQ 19-109 (Jacqueline Payne).pdf

corrected

From: Turay, Radia (COE)
Sent: Monday, October 28, 2019 4:11 PM
To: Quintanilla-Beyer, Joanie (ISD) <Joanie@miamidade.gov>; Bethel, Pearl (ISD) <Pearl.Bethel@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Cc: Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Brazle, Cedric (OCA) <Cedric.Brazle@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Payne, Jacqueline (MDCR) <Jacquelin.Payne@miamidade.gov>
Subject: RE: INQ 19-109, Thomas Davis, Esq., Director of Policy and Legislation, Office of the Commission Auditor [Appearance of Impropriety]

Please see document with corrected INQ number.
Thanks!

From: Turay, Radia (COE)
Sent: Monday, October 28, 2019 2:32 PM
To: Quintanilla-Beyer, Joanie (ISD) <Joanie@miamidade.gov>; Bethel, Pearl (ISD) <Pearl.Bethel@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Cc: Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Brazle, Cedric (OCA) <Cedric.Brazle@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Payne, Jacqueline (MDCR) <Jacquelin.Payne@miamidade.gov>
Subject: INQ 19-109, Thomas Davis, Esq., Director of Policy and Legislation, Office of the Commission Auditor [Appearance of Impropriety]

Hello,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance in connection with the Appointment of Selection Committee for Miami-Dade Corrections and Rehabilitation Department (MDCR) Request for Proposals for Inmate Commissary and Banking & Staff Self-Service Supermarket Program – RFP No. 01207. Please find our opinion regarding same attached.

Thanks,

RADIA TURAY

Staff Attorney
Miami-Dade Commission on Ethics and Public Trust
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From: Brazle, Cedric (OCA) <Cedric.Brazle@miamidade.gov>
Sent: Thursday, October 17, 2019 1:31 PM
To: Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Bethel, Pearl (ISD) <Pearl.Bethel@miamidade.gov>; Quintanilla-Beyer, Joanie (ISD) <Joanie@miamidade.gov>
Cc: Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Edwards, Phillip G. (OCA) <Phillip.Edwards@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Subject: RFP No. 01207 - Inmate Commissary and Banking Services & Self-Service Supermarket

Good Afternoon –

This email is being sent on behalf of Thomas B. Davis, Esq., Director of Policy and Legislation for the Office of the Commission Auditor.



Cedric Brazle, Jr., Senior Executive Secretary
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