



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Vincent Morello, Assistant Director, Miami-Dade Water and Sewer Department

**FROM:** Gilma Diaz-Greco, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 19-128

**DATE:** December 20, 2019

**CC:** All COE Legal Staff; Kevin Lynskey, Director, Miami-Dade Water and Sewer Department; Hardeep Anand, Deputy Director, Capital Improvements and Regulatory Compliance, Miami-Dade Water and Sewer Department

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts:

You are employed at the Miami-Dade County Water and Sewer Department (“WASD”) as an Assistant Director in the Utility Engineering and Construction division of WASD’s Capital Improvements Section (“CIP”). You would like to engage in outside employment as a Senior Consultant with Launch! Consulting, Inc. (“Launch”), a consulting firm that provides professional consultation to government and private organizations regarding all operational aspects regarding utilities, transportation, and public works.

Issue:

Whether any prohibited conflicts of interest may exist between your County employment and your proposed outside employment as a Senior Consultant with Launch.

Background:

As background, you are employed at WASD as an Assistant Director in the Utility Engineering and Construction division, one of three divisions of WASD's CIP Section. WASD's CIP Section is made up of three divisions; Capital Program Management, Utility Engineering and Construction (CIP Engineering and Constructions), and Planning and Regulatory Compliance (CIP Planning).

Your job duties as Assistant Director at WASD include oversight and administration of CIP's Engineering and Construction division which works with CIP Planning in order to design, implement, and construct over one billion dollars of WASD projects such as: repair and replacement of equipment and pipelines; new projects; and providing post-disaster recovery and damage assessment of utility plants and pipelines. CIP Planning is responsible for oversight of planning and determining CIP projects for WASD. Your Division, CIP Engineering and Construction, carries out these projects. Pursuant to Federal law and County ordinances WASD projects, including repairs, must address and include resiliency measures. Given CIP Engineering and Construction division's role in the execution of projects approved by CIP Planning, the Engineering and Construction division and its staff is likely to interact with the Planning Division staff and vendors to design and implement the tasks and projects determined by CIP Planning.

You are seeking to engage in Outside Employment as a Senior Consultant with Launch, a consulting Company based in Virginia. Launch provides professional consultation to government and private infrastructure-based organizations such as utilities, public works, transportation etc. for operational, capital, maintenance, resiliency planning-programming, emergency response and preparedness and continuity of operations and training in these areas. Your job duties with Launch would include consulting on utility capital improvement projects including resiliency consulting. You advise that in early 2019, when you initially considered outside employment with Launch, the company did not have any direct or indirect business relationship with Miami Dade County. However, as of Fall 2019, Launch was hired as a subconsultant for Hazen and Sawyer, PC ("Hazen") a County Vendor that is contracting with WASD's CIP Planning. Hazen provides a variety of water engineering solutions, including research, construction, energy audits, water resource, control and information systems, and watershed management services to utilities sectors. You advise that Launch's subcontract with Hazen is currently limited to a one-time project of drafting a Risk-Vulnerability Assessment, Resiliency, and Energy Preparedness report for Miami Dade WASD pursuant to reporting and certification requirements set out in the Federal America's Water Infrastructure Act. The first certification report is due in March 2020.

We have consulted with your supervisor at WASD who advises that overlap is likely between the work that Launch is conducting for CIP Planning and the division that you manage because the two divisions will need to interact to obtain information regarding the current physical state and resiliency of WASD infrastructure. Furthermore, if Launch were to continue to provide services related to the implementation of WASD projects beyond the preparation of the risk assessment and resiliency report, the implementation of these projects would also likely involve interaction, review, etc. between launch and the CIP Engineering division which you oversee.

### Analysis and Opinion

Several sections of the Miami-Dade Code of Ethics must be considered in analyzing whether a County employee's outside employment may create prohibited conflicts of interest.

- Sections 2-11.1(j) and (k) prohibit County employees from engaging in outside employment which creates a conflict between the County employee's public duties and his or her private interests and would therefore be likely to impair the County employee's independence of judgment in the performance of his or her official duties. Furthermore, County employees may not engage in outside employment that creates a conflict of interest between the employee's public duties and his or her personal interests. Miami-Dade Administrative Order 7-1.
- Section (g) of the County Ethics Code prohibits County employees from using their official position to obtain special privileges or exemptions for themselves others. Overseeing, administering, being involved in the selection, or recommendation of any current or future contract that the employee's outside employer may have with the county, and/or the use of County time or resources in the performance of outside employment, may constitute an "exploitation of official position" in violation of Section 2-11.1(g) of the County Ethics Code.

In addition, County Administrative Order AO 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties. It states that "Under no circumstances shall a County employee accept outside employment ... where a real or apparent conflict of interest with one's official or public duties is possible."

The Ethics Commission has also provided opinions in analogous situations regarding County employees engaged in outside employment with County vendors. For example, the Ethics Commission has determined that conflicts can arise when a County employee works for a County vendor that contracts with the department where the employee works if there is overlap between the employee's County duties and outside employment responsibilities.

*See* RQO 99-50 and INQ 12-155. Furthermore, the Commission on Ethics determined that conflicting employment would likely occur where the County employee is employed by a County vendor that services the facilities where the employee performs his or her County duties; where the County employee routinely interacts with employees of the County vendor during his County work hours; or the employee or his or her supervisor are responsible for oversight or management of the County vendor employees. *See* RQO 16-02 and INQ 11-67. The Ethics Commission reasoned in those opinions that the outside employment with a vendor that contracted with the department where the employee worked would likely improperly affect the County employee's relationships with his County co-workers and might induce him to use confidential information to benefit his private employer.

In this instance, a conflict would similarly be created in your proposed outside employment because Launch, your prospective outside employer, is providing services to WASD through a County Vendor. Launch is part of the Hazen team that is providing risk and resiliency consulting services to WASD CIP, and your County duties as Assistant Director of CIP Engineering and Construction would likely require you and your staff to interact with Launch staff. Your County duties would also include oversight and supervision of Launch staff performing work at WASD including any resilience issue associated with your division's role in the design and implementation of the tasks and projects determined by CIP Planning role.

Based on the facts presented here and after consultation with your WASD supervisor, we concur with him that it is likely that conflicts will exist between your County duties and your proposed outside employment as a Senior Consultant with Launch. Consequently, your proposed outside employment would be barred by the County Ethics Code. On a further note, we advise that all County employees are covered by Section (h) of the County Ethics Code which prohibits use of any confidential information acquired as a result of your County employment to derive a personal benefit (Miami-Dade Code § 2-11.1(h)).

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. Please contact the Commission on Ethics for a separate ethics opinion if these facts change or if you seek employment with Launch after it has completed any work related to WASD or Miami-Dade County. 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.