



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Gerald K. Sanchez
Assistant County Attorney

FROM: Jose Arrojo, Executive Director
Martha D. Perez, Staff Attorney

SUBJECT: INQ 19-26 , Transacting Business with County (Sections 2-11.1(c), (d),
County Ethics Code) and Section 25A-3, Public Health Trust

DATE: February 27, 2019

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding limitations on transacting business with the County that may apply to your spouse's company, which has entered into a pilot program with Jackson Health Systems (JHS).¹

Facts: Monica Rizo Perez (Ms. Rizo) is an Assistant County Attorney. Her spouse, René Perez, is a principal in ConciergePad, LLC (Concierge), a Florida limited liability company. It lists Onlinerene, LLC (Onlinerene), a limited liability company, as registered agent. Onlinerene is owned by René Perez. Mr. Perez holds a 73% financial interest in Concierge.

Concierge is the vendor of a software platform/program that expedites the front-desk registration of visitors to any given facility. Concierge has entered into a test pilot program with Jackson Health System/ Public Health Trust (JHS/PHT) to test the software for sixty (60) days at a cost of \$12,900. Ms. Rizo is not assigned to represent or advise JHS/PHT on this pilot program.²

¹ Pilot project agreements are entered by the County for a limited time, for the purpose of evaluating technology, product and/or services. These agreements are subject to review and approval by the County Attorney's Office for legal sufficiency. *See* I.O. 3-38

² Jackson Health System is a nonprofit academic medical system and integrated healthcare delivery system governed by the Public Health Trust, to ensure that all residents of Miami-Dade County receive a single high standard of care regardless of their ability to pay.

Discussion: The Miami-Dade Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) generally bars County officials and employees from transacting business with the County. More specifically, Section 2-11.1(c) (1) of the Ethics Code provides that no person included in subsection (b)(1) through (b)(6)³, or their immediate family as defined in subsection (b)(9), shall enter into any contract or transact any business, *except as provided in (c)(2) through (c)(6)*, in which he or she, or a member of his or her immediate family⁴, has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered into in violation of the subsection shall render the transaction voidable.

As mentioned, Subsections (c)(2) through (c)(6) provide exceptions to the general bar or grant appeal procedures which allow County officials and employees to transact business with the County; however, these exceptions are not available or applicable to Assistant County Attorneys or the other members of the departmental personnel category of employees as defined in subsection (b)(5) of the Ethics Code.

Similarly, Section 2-11.1(d) which also addresses the issue of limitations on contracting with the County, prohibits County officials, departmental personnel and employees, and/or their immediate family members, from entering into a contract or transacting business through a firm, corporation, partnership or business entity in which he or she or any member of his immediate family has a controlling financial interest⁵, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered into in violation of this subsection shall render the transaction voidable. *See* RQO 15-06⁶

You cite to RQO 03-104 in support of allowing Concierge to transact business with the PHT. In RQO 03-104, the Ethics Commission was considering whether the spouse of a County commissioner could contract with the PHT in light of Section 2-11.1(d) of the County Ethics Code which prohibits the immediate family member of a County commissioner from transacting business with the County through a business entity where he holds a controlling financial interest. The Commission opined that, based on the language of Section 25A-3(c) of the County Ethics

³ Assistant County Attorneys are defined as “departmental personnel” pursuant to Section 2-11.1(b)(5) of Ethics Code.

⁴ Subsection (b)(9) defines immediate family members to include spouses and domestic partners.

⁵ Controlling financial interest is defined in the County Ethics Code as 10% direct or indirect ownership of an entity.

⁶ The Ethics Commission, in RQO 15-06, opined that the corporation employing the spouse of a County Department Director (departmental personnel), where the spouse held less than 1% interest in the corporation, could transact business with the County, as long as the spouse did not have a controlling financial interest in the corporation.

Code, *Public Health Trust*⁷, the prohibition against a spouse of a County commissioner contracting with the County found in Section 2-11.1(d) was not applicable in transactions involving the Public Health Trust because in PHT matters, *all references in the County Ethics Code* to “commissioner” are substituted for “PHT Board Member”, and since the commissioner was not a PHT Member, her husband would be able to contract with the PHT.

This office is strongly persuaded by the language in RQO 03-104 in concluding that, in PHT matters, just like the term County Commissioner is substituted for PHT Board Member, reference to County personnel and employees in Section 2-11.1(b) may be similarly substituted for JHS personnel and JHS employees. In other words, considering the language of Section 25A-3(c), when read in *pari materia* with RQO 03-104, Section 2-11.1(d) would prohibit PHT Board Members, JHS departmental personnel and JHS employees and their immediate family members from entering into any contract or transacting any business with PHT/JHS in which they have a controlling financial interest.⁸

Following this reasoning, Mr. Perez would not be prohibited from transacting business with PHT/JHS since his spouse is not JHS departmental personnel.

Opinion: The County Ethics Code at Sections 2-11.1(c) and (d) and Section 25A-3(c) of the MDC Code (as interpreted in RQO 03-104) permit Mr. Perez, through Concierge, to participate in the pilot program agreement with JHS/PHT because Ms. Rizo is not departmental personnel of the JHS/PHT. It is recommended that, in line with the limitations imposed by Sections 2-11.1(c) and (d), Concierge may enter into a contract or transact business with JHS/PHT as long as the contract does not interfere with the full and faithful discharge of Ms. Rizo’s employment duties to the County and as long as neither the County Attorney’s Office, nor Ms. Rizo specifically, are involved in the pilot program’s agreement or any subsequent contract resulting from the pilot program, through its negotiation, enforcement, oversight, administration, amendment, extension, termination or forbearance.⁹

⁷ Pursuant to Section 25A-3(c), “Whenever in the Conflict of Interest [COI] Ordinance reference is made to Miami-Dade County, that reference shall be deemed and construed to be a reference to the Public Health Trust; wherever in the [COI] Ordinance reference is made to the [BCC], that reference shall be deemed and construed to be a reference to the Board of Trustees of the [PHT]; and wherever in the [COI] Ordinance reference is made to the Commissioners of the [BCC], that reference shall be deemed to be a reference to the voting members of the Board of Trustees of the [PHT].”

⁸ Consequently, pursuant to the PHT enabling ordinance, Section 2-11.1(d), as applied to transacting business situations, would read as follows: “No person included in the terms defined in subsections (b)(1) through (b)(6) and in subsection (b)(9) [that is, **PHT Board members, PHT/JHS** autonomous, quasi-judicial and advisory personnel, **JHS** departmental personnel, **JHS** employees and the immediate family of the person involved] shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of his immediate family has a controlling financial interest, direct or indirect, with the **PHT/JHS or any person or agency acting for the PHT/JHS...**”

⁹ Understanding that the County Attorney’s Office involvement in pilot programs extends to a review of the agreement for legal sufficiency.

In addition, Ms. Rizo may not use her County position to secure special privileges or exemptions with respect to the pilot program agreement or any subsequent contracts and she may not lobby the County or JHS/PHT on behalf of Concierge at any time. *See* County Ethics Code §§ 2-11.1(g) and (m).

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.