

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, April 02, 2019 3:06 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ 19-37 to Hans Ottinot, Former City Attorney, Sunny Isles Beach, Post-employment restrictions
Attachments: INQ 19-37 Ottinot.docx

INQ 19-37 Ottinot

From: Perez, Martha D. (COE)
Sent: Tuesday, April 2, 2019 2:58 PM
To: hottinot@rkcenters.com
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: INQ 19-37 to Hans Ottinot, Former City Attorney, Sunny Isles Beach, Post-employment restrictions

Dear Mr. Ottinot,

Attached is a response to your inquiry regarding the Two-Year Rule and the City of Sunny Isles Beach post-employment prohibitions. Should you have any questions, do not hesitate to contact me.

Sincerely,

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
19 West Flagler St. Suite 820
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(305)350-0656
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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Hans Ottinot, Esq.

Via Email @ hottinot@rkcenters.com

RE: INQ 19-37, Section 2-11.1(q), County Ethics Code, The Two-Year Rule

Dear Mr. Ottinot,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding limitations imposed by the Two-Year Rule found at Section 2-11.1(q), County Ethics Code.

You were the City Attorney for Sunny Isles Beach until your recent retirement in February 2019. You are the President of Ottinot Law, P.A. Following your new position and the prospect of clients with City interests, you seek guidance on whether you may engage in the *pro bono* representation of a non-profit condominium association in a quasi-judicial matter before the Sunny Isles Beach Commission.¹

Section 2-11.1(q) of the County Ethics Code, *Post-Employment Ordinance* (commonly referred to as the Two-Year Rule), prohibits a city employee from lobbying the city for two years following his separation from city employment. Lobbying activities as described in the Ordinance are more expansive than those found in the County's Lobbying Ordinance (Section 2-11.1[s]). For example, lobbying under the Two-Year Rule includes advocating for decisions or recommendations that will foreseeably be decided or recommended by the city commission, city board, or at the sole discretion of the City Manager or City personnel.

The lines between practicing law and lobbying can get murky. While you are allowed to engage in transactions with City staff that are ministerial in nature (*See* RQO 04-33 and INQ 10-189) or submit routine administrative requests (*See* Section 33.3(P)(2), Sunny Isles Code), such as requesting public records or inquiring about the status of submitted documents, you are prohibited from lobbying the City Commission, City boards, City Manager or City Staff.

While the County has placed these post-employment restrictions on former County officials and employees, the City of Sunny Isles Beach has enacted a more stringent standard of

¹ You have been asked to assist a condo association in a matter regarding a development project that will negatively impact the association.

conduct with respect to post-employment activities prohibited for two years after employment with the City has ceased. Section 33.3 (P)(1) of the Sunny Isles Code (City Ordinance) prohibits City commissioners, departmental personnel and employees, for a period of two years after City service has ceased, to “act as attorney for anyone other than the City in connection with any judicial or other proceeding...” Subsection (P)(2) prohibits a former *City Attorney*, for a period of two years after service, to “communicate orally, in writing, or in any other manner on behalf of any other person or entity with the intent to influence a government decision, exploit for personal gain, subordinate the interests of the City to those of a current or prospective employer...act in any way as to give an appearance of impropriety, corrupt the government decision-making process, lobby, or testify as a fact or expert witness, whether paid or unpaid, *or otherwise attempt to unduly influence any City officer or employee in connection with any judicial, quasi-judicial or other proceeding[or] with regard to any zoning or land use issue...*”² The City Ordinance emphasizes that this aforesaid provision constitutes an “unequivocal and absolute prohibition” **unless** the person becomes employed or makes an appearance, in his or her official capacity, on behalf of a governmental entity, a 501(c)(3) nonprofit entity or an educational institution.³

Consequently, although it appears that you will be advocating on behalf of the condo association on a zoning issue, your unpaid representation of the not-for-profit entity in a quasi-judicial proceeding is not prohibited. However, any meetings outside the proceeding which involve discussions with City staff to persuade or influence City staff to make or modify a recommendation or take other official action constitute actions prohibited under the County’s Two- Year Rule (*See* INQ 16-197) and the City’s Post-employment Ordinance.

I would like to direct you to Section 33.3(P) of the Sunny Isles Beach Code (cited herein) and the following ethics opinions which may be of interest to you in any pending or future representations on behalf of third parties in City matters: RQO 01-38, RQO 02-139, RQO 04-33, RQO 12-09.

Should you have any additional inquiries concerning the Two-Year Rule or any other provision of the County Ethics Code, please contact us at (305) 579-2594.

Sincerely,

Martha D. Perez
Staff Attorney

² While the County Ethics Code exempts representations in quasi-judicial matters from the prohibitions under the Two-Year Rule (*See* RQO 11-26, INQ 13-199, INQ 16-197), the Sunny Isles Post-Employment Ordinance specifically prohibits lobbying in connection with quasi-judicial proceedings.

³ Additional exemptions under the City Ordinance include: where the former employee has been subpoenaed to testify in a judicial proceeding, has received a zoning notice and wishes to comment at a public hearing, or when the former employee’s own property is the subject of a judicial/quasi-judicial/other proceeding. Also, the prohibitions under Subsection (P)(2) may be waived by the City Commission.

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.