

Sanchez, Rodzandra (COE)

From: Perez, Martha D. (COE)
Sent: Monday, May 20, 2019 5:14 PM
To: Jose.Fontanez@uss.salvationarmy.org
Cc: Arrojo, Jose (COE); Murawski, Michael P. (COE); Turay, Radia (COE); Diaz-Greco, Gilma M. (COE); Sanchez, Rodzandra (COE)
Subject: INQ 19-52
Attachments: INQ Fontanez.docx

Dear Mr. Fontanez,

Thank you for contacting the Miami-Dade Commission on Ethics & Public Trust, seeking our guidance in connection with your organization's lobbyist registration requirements. Please find our opinion regarding same attached.

Cordially,

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
19 West Flagler St. Suite 820
Miami, FL 33130
(305)350-0656
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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Jose Fontanez, MACP
Director of Social Services
The Salvation Army Miami Area Command
1907 NW 38th Street
Miami, FL 33142
Via email @ Jose.Fontanez@uss.salvationarmy.org

RE: INQ 19- 52, Section 2-11.1(s), County Ethics Code, *Lobbying*

Dear Mr. Fontanez,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding limitations imposed by the Lobbying Ordinance found at Section 2-11.1(s) of the County Ethics Code.

You advised that Jackson Health Systems (JHS) has an existing emergency shelter agreement with the Salvation Army (SA)¹ which they wish to renew and/or extend for another year. The only change or modification to the agreement is that JHS will give more money to SA; otherwise, there have been no negotiations, nor do you foresee any negotiation discussions about the agreement as there have been no changes made or requested by SA.

JHS procurement officials have directed you to request a written opinion reference this subject-matter.SA is not registered as a lobbyist with JHS-PHT.

Section 2-11.1(s) of the County Ethics Code, Lobbying, defines a lobbyist as “ all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission (PHT); (2) any action, decision, recommendation of the County [Mayor] (JHS-PHT CEO) or any County (JHS-PHT) board or committee; or (3) any action, decision or recommendation of County (JHS-PHT) personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission (PHT), or a County (JHS-PHT) board or committee.” “Lobbyist’ specifically includes the principal...” In other words, an attempt to influence a decision-maker on an official action or decision of the government entity is considered lobbying. (INQ 12-47)

¹ The SA is a charitable 501(c)(3) organization assisting the needy with shelter, food and programs.

The Ethics Commission has opined that an amendment or modification of an existing contract where the vendor communicates with County/ JHS personnel to *negotiate* terms of the contract would require registration as a lobbyist. *See* RQO 18-05; RQO 08-41. However, a vendor who appears *at the County's request* to obtain information or complete the sale of a product, would not be required to register. *See* INQ 18-248; INQ 15-268. Applying this principle to the case at hand, it would appear that, a vendor such as SA which is solely responding and agreeing to JHS's option to extend their agreement and receive more money without any attempt to discuss or influence JHS to do so, would not be required to register as a lobbyist.

As you have described, neither JHS nor SA have engaged in negotiations or discussions to extend the contract or give SA more money; rather, these have been unilateral options offered by JHS which SA is agreeing to without seeking or attempting to influence, advocate or discuss any of the contractual terms. Consequently, the actions by JHS in opting to renew the contract and providing additional funding to benefit SA would not trigger lobbyist registration.²

It is important to note that, any future communications in an attempt to or with the intent to, *negotiate* substantive terms of a new or existing contract between SA and JHS-PHT would require lobbyist registration.³ (RQO 06-63, RQO 06-65, RQO 10-28; INQ 18-48; INQ 15-187)

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

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.

² Cf. Amending or extending a contract requires lobbyist registration. RQO 05-114 (A group purchasing agent for PHT is required to *discuss* any substantive contract extensions or amendments, excluding change orders and extensions provided for in the original agreement, if the PHT must approve the extension or amendment).

³ A person who lobbies on behalf of a non-profit entity must register to lobby, is exempt from the lobbyist registration fee but must take the lobbyist ethics course within 60 days and pay the \$100 fee. Section 2-11.1(s)(4); RQO 04-07; INQ 15-218

