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February 13, 2020

Tammy Dumas, Sr. Analyst
Ethics & Lobbying Compliance
FedEx Government Affairs
942 S. Shady Grove Road
Memphis, TN 38120
Via email @ tammy.dumas@fedex.com

RE: INQ 20-10, Section 2-11.1(s), County Ethics Code, *Lobbying*

Dear Ms. Dumas,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (Ethics Commission), requesting our guidance regarding the following proposed transaction.

The Ethics Commission was advised that FedEx is in the process of engaging with Jackson Health Systems (JHS) regarding a bid waiver contract¹ through which FedEx would provide same day delivery service for JHS' Pharmacy department. It is anticipated that the contract will be presented to the Public Health Trust (PHT) for approval.

You have inquired regarding whether FedEx employees are required to register as lobbyists in order to participate in negotiations with JHS.

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

¹ In bid waiver contracts, the action, decision and recommendation to engage with a specific vendor has already been made by the user department. After receiving the request from the user department, JHS' procurement officer, among other duties, drafts a contract and enters into negotiations with the vendor's representative(s) regarding various contractual terms.

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. *See* INQ 12-47.

Additionally, the Ethics Commission has opined that “a principal of a corporation and/or a person, firm, or corporation employed or retained by a principal, IS REQUIRED to register as a lobbyist prior to participating in negotiation sessions with the County (JHS-PHT) on a bid waiver contract that is procured through the County’s (JHS-PHT) non-competitive procurement process, if the contract requires review or approval by the County Commission (PHT), County Mayor (JHS-PHT CEO) or a County (JHS-PHT) board or committee.”² *See* RQO 18-05.

Consequently, FedEx employees who participate in negotiations with JHS regarding this bid waiver contract, would be *required* to register as lobbyists, as it is our understanding that this contract requires review or approval by PHT, JHS-PHT CEO, or a JHS-PHT board or committee.

Should you have any additional inquiries concerning any provision of the County Ethics Code, please do not hesitate to contact us at (305) 579-2594.

Sincerely,

Radia Turay, Esq.
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 Under the County Ethics Code, a principal is the owner, president or chief shareholder of a corporation or any individual who has been designated or who has the apparent authority to make a final decision on behalf of a corporate entity during the decision-making process (including negotiation phase) on any action, decision or recommendation by County personnel that requires review or approval or the County Commission (PHT), County Mayor (JHS-PHT CEO) or a County (JHS_PHT) board or committee. *See* RQO 18-05 and RQO 08-41.