



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Joel Perez, General Superintendent
Miami-Dade Department of Transportation and Public Works

Mirto Barcelo Carrillo, Bus Operator
Miami-Dade Department of Transportation and Public Works

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-28

DATE: March 23, 2020

CC: All COE Legal Staff

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

Facts:

Mr. Mirto Barcelo Carrillo is employed as a part-time, Bus Operator at Miami-Dade Department of Transportation and Public Works (DTPW). He transports people along an assigned route. He works out of DTPW's Coral Way station.

He would like to engage in outside employment as a bus driver with LSF, a County vendor. LSF services approximately 23 bus routes for Miami-Dade Transit. It is our understanding, based on our conversations with Carlos Azor, LSF's General Manager, that Mr. Carrillo does not transport passengers in his outside employment with LSF.

Mr. Azor explained that mainly Mr. Carrillo picks up the buses from LSF's bus depot, and takes the buses to Miami-Dade County Transit's Government Center station for fueling. Mr. Carrillo also picks up buses that might have broken-down along the route serviced by LSF. Further, he takes buses from LSF's bus depot to one of Miami-Dade County Transit bus centers for probing, during which an employee from the Revenue Section of DTPW retrieves the money box on the bus. Mr. Azor indicated that Mr. Carrillo will no longer take the buses serviced by LSF to the Coral Way location at which Mr. Carrillo conducts his County employment.

Issue:

Whether any prohibited conflicts of interest may exist between Mr. Carrillo's County employment and his outside employment as a driver for LSF, a County vendor.

Discussion:

The County Ethics Code prohibits County employees from engaging in other employment that would impair their independence of judgment in the performance of their public duties. *See* Miami-Dade County Ethics Code at 2-11.1(j). To that end, it becomes imperative for all employees to avoid any and all instances which represent or may represent conflicts between their personal interest and their public duties. *See* County's Administrative Order 7- 1. Consequently, it is within the discretion of County department directors to deny outside employment if it is determined, *at any time*, to be contrary, detrimental, or adverse to the interest of the County or the employee's department. *See* RQO 16-02 and RQO 00-10. When determining whether to grant permission to engage in outside employment, a department director may ask the Ethics Commission for an opinion regarding potential conflicts of interest with a County employee's current or proposed outside employment. *See* RQO 16-02 and INQ 13-28.

Inquiries concerning conflicting outside employment often involve a consideration of a myriad of factors, among them, whether there is a close relation or similarity between the employee's duties to the County and his or her duties to the outside employer. In this instance, while Carrillo's employment as a bus driver for a County vendor, appears to be similar in title to his position as a bus operator for DTPW, his duties at the two jobs are however very different. Specifically, Carrillo's duties with the County is limited to transporting passengers along an assigned bus route, while his duties for the County vendor will not include picking up or transporting any passengers whatsoever.

In addition to the "closely-related" factor, in this case we are faced with an outside employer who is also a County vendor providing a service to the same County department/division that the County employee is assigned. Generally, the County Ethics Code does not prevent an employee from being employed by a County vendor, *as long as the employee does not have any involvement with the vendor's contract*. *See* RQO 16-05; INQ 17-236, INQ 15-115, and INQ 11-67. In this instance, it is undisputed that Mr. Carrillo does not oversee the contract between the County and LSF. His position as a bus operator at DTPW does not confer upon him any managerial functions, including but not limited to, administering the contract, reviewing or approving any work orders from his outside employer, or monitoring/overseeing any work performed by his outside employer for the County.

Opinion:

Consequently, based on the facts presented here, and after discussing this matter with Mr. Joel Perez, the General Superintendent at DTPW, we concur with him that Mr. Carrillo's outside employment with LSF, would not create conflicting employment. This is because Mr. Carrillo is not involved with the selection, oversight, or administration of LSF's

contract with the County; he will not be supervised by the same individuals in both his County employment and his outside employment as he will not transport any passengers for his outside employer; he will not have contact or interaction with the same people or entities in his outside employment as he does in his County position, as Mr. Azor, the General Manager of LSF has agreed that Carrillo will no longer take the buses serviced by LSF to the Coral Way location at which Mr. Carrillo conducts his County employment; and Mr. Carrillo would perform his outside employment outside of his County work hours.

However, the Ethics Commission strongly recommends that the following limitations be imposed on Mr. Carrillo's permission to engage in the aforementioned outside employment:

- Carrillo should not be assigned to the section/routes which is serviced by his outside employer in any capacity;
- Carrillo should not be supervised by any County official or staff assigned to oversee, negotiate, enforce or otherwise have any involvement with the County contract/agreement with LSF;
- Carrillo must complete an Affidavit with the Miami-Dade Clerk of the Courts, disclosing employment with a County vendor;
- Carrillo shall not use County time or resources (including but not limited to, phones, radios, computers, equipment) in furtherance of his outside employment;
- Carrillo shall not use any confidential information acquired as a result of his County position, nor shall he ever disclose confidential information gained through his County position, nor shall he ever use such information, directly or indirectly, for his own personal gain or benefit or the gain or benefit of his outside employer;
- Carrillo shall not represent his outside employer in any matter before the County.

See RQO 16-02.

Furthermore, as long as Mr. Carrillo is engaged in outside employment, he must obtain permission to engage in outside employment annually. Please note, that he does not have to file an outside employment financial disclosure form (Outside Employment Statement) while he is employed at the County on a part-time basis. *See* County Ethics Code Sections 2-11 and 2-11.1 (k)(2).

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.