



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO:

Erik Gonzalez, Technical Services Planner Scheduler,
Miami-Dade Aviation Department (MDAD)

Ana Finol, Division Director 3
Miami-Dade Aviation Department (MDAD)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-29

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:

You are a Technical Services Planner Scheduler (TSPS) in the Miami-Dade Aviation Department (MDAD), Maintenance Planning Engineering and Construction Division. Your job duties include administrative work planning. You also plan, schedule, and coordinate large volume repair and maintenance work at a number of County facilities.

You would like to engage in outside employment as a MEP/Designer for PJV Engineering, Inc. (hereinafter "PJV"), a County vendor. Your duties for PJV would include mechanical and electrical design; drafting services in consulting engineering fields; deploying and supporting MEP tasks in electrical systems including lighting, normal and emergency power, communications and fire alarm systems.

It is our understanding from your Division Director, Ms. Ana Finol, that the County division for which you work, oversees PJV, in the division's Maintenance Engineering Section under the Equitable Distribution Program managed by the Internal Services Department (ISD).

However, Ms. Finol indicated that you do not work in the Maintenance and Engineering Section that oversees PJV. You work for the Construction and Contracts Section which deals only with contractors registered under the Miscellaneous Construction Contract Program (MCC) managed by ISD.

Additionally, she stated that she did not believe that your proposed outside employment will present a conflict of interest because you do not have anything to do with the selection, oversight, or administration of your outside employer's contract with the County; and you will never have the opportunity to review/approve any documentation from this company or any other A/E consultant because work orders for contractors are reviewed and approved by the construction managers, not by Technical Services Planner Schedulers, such as yourself.

Further, you have advised that in order to avoid potential conflicts of interest, none of the work that you will perform for PJV will be at or for MDAD or any County facility. (Emphasis added)

Issue:

Whether any prohibited conflicts of interest may exist between your County employment and your proposed outside employment as a MEP Designer for PJV, 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, your supervisor may ask the Ethics Commission for an opinion regarding potential conflicts of interest with your 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, as in this case, whether the employee's outside employer is a County vendor providing 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 you do not oversee the contract between the County and your outside employer. Your position as a TSPS does not confer upon you any managerial functions, including but not limited to, administering the contract, reviewing or approving any work

orders from your outside employer, or monitoring/overseeing any work performed by your outside employer for the County.

Opinion:

Consequently, based on the facts presented here, and after discussing this matter with Ms. Finol, the Director of MDAD's Maintenance Planning Engineering and Construction Division, we concur with her that your outside employment as a MEP Designer for PJV, would not create conflicting employment. This is because this vendor does not provide services to the Construction and Contracts Section that you are assigned at the County; you are not involved with the selection, oversight, or administration of PJV's contract with the County; you would not have contact or interaction with the same people or entities in your outside employment as you do in your County position; you would perform your outside employment outside of your County work hours; you do not have routine access to information or other County resources that would be likely to benefit your outside employer; and your outside employment would not require you to interact with other County MDAD employees on a routine basis as you have indicated that none of the work that you will perform for PJV will be for or at MDAD of any County facility.

However, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment:

- You should not be assigned to the section which is serviced by your outside employer in any capacity;
- You 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 PJV;
- You must complete an Affidavit with the Miami-Dade Clerk of the Courts, disclosing employment with a County vendor'
- You shall not use County time or resources (including but not limited to, phones, radios, computers, equipment) in furtherance of your outside employment;
- You shall not use any confidential information acquired as a result of your County position, nor shall you ever disclose confidential information gained through your County position, nor shall you ever use such information, directly or indirectly, for your own personal gain or benefit or the gain or benefit of your outside employer;
- You shall not represent your outside employer in any matter before the County.

See RQO 16-02.

Furthermore, as long as you are engaged in outside employment you must obtain permission to engage in outside employment annually; file an affidavit annually with the Clerk of the Board to disclose your employment with a County vendor; and file an outside employment financial disclosure form (Outside Employment Statement). County Ethics Code Sections 2-11 and 2-11.1 (k)(2) and (f).

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.