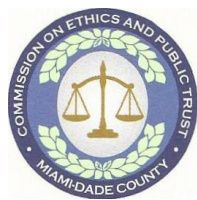


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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November 5, 2021

Via Electronic Mail:

YolandaAguilar@cityofwestmiami.org

Yolanda Aguilar
West Miami City Manager
901 Southwest 62nd Avenue
West Miami, Florida 33144

Re: INQ 2021-141, Yolanda Aguilar, West Miami, Section 2-11.1(c), (p) and (n), Family Member Volunteer

Dear Ms. Aguilar:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the below described transaction.

Issue

1. Whether the Ethics Code prohibits the city manager's daughter, a human resources consultant and city resident, from volunteering to assist the manager, staff, and city commission with revisions and updates to city personnel and human resources policies.

Brief Answer

1. The Ethics Code does not prohibit the city manager's daughter, a city resident, from volunteering her services as a human resources expert to the manager, staff, and the legislative body to assist the city with revising and updating its personnel and human resources policies.

Facts

You are employed as the City Manager for the City of West Miami, Florida (“the City”). The City is in the process of updating its personnel and human resources policies. As the City Manager, you will be presenting updated and revised policies to the City Commission for its consideration and vote.

Your adult daughter is a lifelong resident of the City. She is also a Human Resources Consultant. Your daughter would like to volunteer her time and professional expertise, in her individual capacity and not on behalf of any corporate entity, to assist you and the City with the personnel and human resources updating process. She will not be contracting with the City, nor will she be seeking or receiving any remuneration or benefit for her volunteer services.

Discussion:

As a preliminary matter, Section 2-11.1(a) of the County Ethics Code provides that whenever there are references to County personnel in the Ethics Code, then those sections shall be applicable to municipal personnel who serve in comparable capacities. Consequently, a municipal city manager is included in the category of “departmental personnel” as defined in Section 2-11.1(b)(5) of the County Ethics Code inasmuch as that section defines departmental personnel as referring to the County Manager and his or her department heads.

Departmental personnel and members of their immediate family are prohibited from transacting with the City.¹ Section 2-11.1(c) of the Ethics Code provides as follows:

Section 2-11.1(c), Prohibition on transacting business within the County. (1) No person included in the terms defined in subsection (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business, except as provided in subsections (c)(2) through (c)(6) in which he or she or a member of his or her immediate family has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violation of this subsection shall constitute malfeasance in office and shall effect forfeiture of office or position.

However, this section of the Ethics Code would not be applicable to the proposed transaction you have described involving your daughter’s volunteer service. You have advised that your daughter

¹ A municipal employee’s daughter is considered “immediate family” under the Ethics Code. *See* Section 2-11.1(b)(9).

is not “entering a contract” with the City. Similarly, she is not “transacting business” with the city, defined as “the purchase or sale by the County [City] of specific goods or services for a consideration.” (See Section 2-11.1(b)(10) of the Ethics Code)

Departmental personnel are also prohibited from recommending the services of a person or professional to assist in any transaction involving the City. Section 2-11.1(p) of the Ethics Code provides as follows:

Section 2-11.1(p), Recommending professional services. No person included in the terms defined in subsections (b)(1) through (6) may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the County or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County officials, officers or employees.

The Ethics Commission has interpreted this section of the Ethics Code to provide that city attorneys who augment their own expertise to provide competent legal counsel to their city clients by hiring specialized attorneys, experts, or others are not making recommendation to assist in transactions involving their governments. Consequently, these actions do not fall within parameters of Section 2-11.1(p) of the Ethics Code. (See RQO 10-12) ²

The reasoning of the opinion issued to a city attorney would likewise apply to you as a charter office municipal manager. As such, this section of the Ethics Code would not be applicable to the proposed transaction involving your daughter’s sharing of her expertise in a volunteer capacity.

Section 2-11.1(n) of the Ethics Code, prohibits a municipal employee from participating in any official action directly or indirectly affecting business in which she or any member of her immediate family has a financial interest.

That section has been interpreted in the past to prohibit government executives from participating in any official action that may cause some financial benefit to flow to a relative. ³ This would be

² See generally RQO 19-01 (If a city attorney is retaining an expert without consulting with the municipal elected body in the discharge of her official duty and the matter involves the terms and conditions of the attorney’s terms and conditions of employment, then the retainer should be presented to the city’s legislative board as soon as practicable.)

³ See generally RQO 11-11 (Subsection (n) prohibits a selection committee member from taking official action when family member is employed by an entity that may bid on the project and thus directly or indirectly receive a financial benefit); RQO 07-20 (Subsection (n) prohibits Assistant

inapplicable to the fact pattern that you have described inasmuch as your daughter is not receiving any financial benefit from her volunteer service.

Finally, in several opinions considering potential voting conflicts, the Ethics Commission has pointed out the County's Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants. A public official must always use his or her own judgment in determining the proper course of action when conducting public business. (*See generally* INQ 2021-69; INQ 13-148; and RQO 12-03)

Conclusion

The Ethics Code does not prohibit your daughter, a city resident, from volunteering her services as a human resources expert to you, municipal staff, and the legislative body to assist the City with revising and updating its personnel and human resources policies.

More specifically, Section 2-11.1(c) of the Ethics Code does not prohibit your daughter from volunteering her services to the City because she is not contracting or otherwise transacting business with the municipality.

Also, Section 2-11.1(p) of the Ethics Code is not violated by the proposed engagement because municipal charter officers are allowed to augment their own expertise to provide competent service to their city clients by hiring specialized experts.

Finally, Section 2-11.1(n) of the Ethics Code does not prohibit you partnering with your daughter who is volunteering her service and expertise because this engagement will not directly or indirectly affect a business in which you or your daughter have a financial interest.

The Ethics Code does not address "appearances of impropriety." Thus, whether your daughter volunteering her time to assist you, staff, and the City Council in reviewing, revising, and updating municipal human resources and personnel policies will create an appearance of impropriety is something that you, as a public servant, are encouraged to consider.

In abundance of caution and to promote absolute transparency, you may wish to advise your Council of this volunteer service by your daughter.

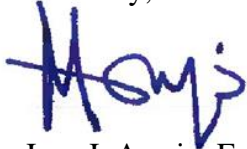
This opinion is limited to the facts as presented to the Commission on Ethics and is further limited to an interpretation of the County Ethics Code only. It is not intended to interpret state laws or

City Manager and CRA Director from taking official action if spouse is employed by nonprofit that receives funding from the CRA)

duties imposed on members of the Florida Bar by the Rules of Professional Conduct. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics and professional conduct rules, to the Florida Bar.

Thank you again for engaging with the Miami-Dade County Commission on Ethics and Public Trust and do not hesitate to contact me should you require any other assistance in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jose J. Arrojo".

Jose J. Arrojo, Esq.
Executive Director

cc: Jose Villalobos, Esq.
West Miami City Attorney

All COE Legal Staff

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.