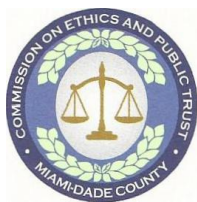


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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November 15, 2021

Via email only to expedite delivery:
jeff@grose.com

Mr. Jeffery Rose
Rose Remodeling and Construction, LLC
8851 Froude Avenue
Surfside, Florida 33154

Re: Ethics Inquiry Request, INQ 2021-143, Conflicting Employment, Sections 2-11.1(j), (d), (g), (m) and (n) of the County Ethics Code

Dear Mr. Rose:

Thank you for contacting the Miami-Dade Dade Commission on Ethics and Public Trust and seeking guidance regarding the application of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance ("Ethics Code") to your possible post-election service as a Commissioner in the Town of Surfside, specifically as relates to your work as general contractor in the Town.

Facts:

You advise that you are a candidate for the Town of Surfside Commission.

You are a general contractor, and you perform work in the Town of Surfside. You are the principal in the firm Rose Remodeling and Construction, LLC. You will have worked as a general contractor in Surfside prior to your possible public service and plan to continue to do the same work if elected.

The Town of Surfside has a strong manager form of government and Commissioners are not involved in the direct supervision of employees. However, in your legislative and quasi-judicial roles on the Town Commission you may be called upon to consider and vote upon matters relating to real property located in Surfside. You will also likely have contact with Town employee in your role as a Commissioner.

Issue:

Whether Jeffery Rose, a candidate for Town Commissioner, is prohibited from working as a general contractor in Surfside if he is elected to the Town Commission and if not, what limitations does the ethics code place on his official involvement in matters related to his business.

Discussion:

There is no *per se* bar on an elected official working within his city and the Ethics Code only prohibits elected officials, like employees or board members, from engaging in employment that might impair his or her independence of judgment in the performance of public duties. *See* Section 2-11.1(j), Ethics Code.

From the facts you have provided, it does not appear that your work as general contractor in Surfside would impair your independence of judgment in the performance of your public duties as a Town Commissioner.

As regards your future consideration and votes on matters as a Commissioner, your actions would be governed by the Ethics Code inasmuch Section 2-11.1(b)(1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.

Because you would be a covered party under the Ethics Code, then Section 2-11.1(d) of the Code would likewise apply to you. The second part of Section 2-11.1 (d) of the Ethics Code provides that an elected official shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Commission] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (Emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official “would or might, directly or indirectly, profit or be enhanced by the action...” as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure “which would inure to his or her special private gain or loss.”

Consequently, if you, your construction company, or a construction company client would or might be directly or indirectly impacted by a matter under consideration by the Town Commission, then you would likely have a voting conflict that would require your recusal. Also, if you would

or might, directly or indirectly, profit or be enhanced by the action, then you would also have a prohibited voting conflict.

Beyond voting, you may not participate in any official action directly or indirectly affecting your construction company. You may not use Town time, resources, or staff in furtherance of your outside employment. Thus, you should refrain from giving Town employees any direct or indirect instruction to engage on any construction matters in which you or your company are involved in. If you must interact with Town employees on ministerial transactions, then you should avail yourself of whatever processes are available to the general public and not seek any special accommodation for you or your clients. *See* Sections 2-11.1(g) and (n), Ethics Code.

You are also prohibited from representing your construction clients before any Town board or agency regarding any benefit or relief sought by the client. *See* Section 2-11.1(m)(1), Ethics Code.

Finally, as regards recent construction clients on completed projects, you may wish to pause and seek ethics guidance regarding your actions as a Commissioner. The Ethics Commission has previously considered somewhat related scenarios involving local elected officials that had prior business relationships with developers and other business clients that were going to be affected by votes of a city commission.

Again, while opining that the elected officials did not have *per se* voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code prohibiting their consideration and vote on matters that would affect the developers or past business associates, the Ethics Commission advised caution. *See* INQ 2021-69; INQ 13-148; and RQO 12-03. More specifically the Commission noted as follows:

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, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business.

Moreover, while the Ethics Commission does not have the authority to interpret or enforce state statutes, we are cognizant of Section 286.012, Florida Statutes, relating to voting requirements at meetings of governmental bodies. While that section provides that a member may not abstain from voting unless there is, or appears to be, a possible conflict of interest under the state ethics code, it does also provide as follows regarding quasi-judicial matters:

If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

Conclusion:

The Ethics Code does not prohibit your service as a member of the Surfside Town Commission while simultaneously being employed as a general contractor in the Town.

However, there are several provisions of the Ethics Code that would limit or otherwise prohibit your official actions, including voting as a member of the Commission, on matters that would or might directly or indirectly affect you, your business, or your clients.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,

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

Jose J. Arrojo
Executive Director

cc: All Commission on Ethics Attorneys

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.