



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jessica Hughes-Fillette
Human Resources Manager

FROM: Jose Arrojo, Executive Director

SUBJECT: INQ 2021-146, AvMed Wellness Program Rewards, Section 2-11.1(e), Gifts & Vendor Public Benefit Clauses

DATE: November 18, 2021

CC: All COE Legal Staff
Commission on Ethics

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

Facts:

The requester is the Senior Manager of the Employee Support Services Section of the Benefits Division in the County's Human Resources Department.

AvMed is a County vendor and the third-party administrator for the County's self-funded group healthcare program. Covered groups under the program include County employees and their eligible dependents, retirees, and Consolidated Omnibus Budget Reconciliation Act (COBRA) participants. Under the contract, AvMed facilitates the delivery of several plan designs (Point of Service and High, Select, Jackson First and Low Health Maintenance Organization) in addition to what are referred to as Wellness and Disease Management Programs or "WellnessWorks" ("wellness program").

The contract requires enhancement funds for the wellness program to be funded by AvMed. The wellness or program is designed to encourage County employees to utilize a “comprehensive suite of personalized tools and support” including physical activities and personal health assessments aimed at promoting healthy lifestyles and thus good health. Through participation, employees can earn points and they can become eligible to receive small financial rewards and other prizes.

For example, one wellness program initiative uses a points system to encourage healthy habits and exercise and a quarterly \$250 drawing coordinated through an outside vendor/platform contracted by AvMed. Employees must engage in an array of activities to earn this reward (ex: Walk 250k steps per quarter, engage in a walking or nutrition challenge, watch 3 wellness education videos).

Each action generally earns participants 25 points. If participants are able to engage and earn 75 points within a quarter, they are entered into a \$250 quarterly drawing. The winners of this drawing are chosen through the third-party vendor randomly and awarded this incentive through allocated Wellness Fund dollars managed by AvMed.

There are two County employees employed in the Employee Support Services Section of the Benefits Division in the County’s Human Resources Department that are assigned to the wellness program: a coordinator and a specialist.

Neither the wellness program staff nor any other County employee are engaged in the process of choosing the random winners for the initiative. The selection, based on a pool of eligible employees based on securing the required point totals, is done by AvMed.

Issue:

May County employees who voluntary choose to participate in health and wellness promoting activities and accrue points, as part of a program funded by the County’s contracted third-party administrator for the self-funded group healthcare program, accept prizes when selected by the contractor from a pool of highest point-getters?

Discussion:

Section 2-11.1(e), Gifts, of the Miami-Dade County Ethics Code (Ethics Code) limits the solicitation and receipt of gifts by County employees. The section prohibits the acceptance or solicitation of gifts given or received in exchange for official actions of County employees or officials (*quid pro quo* actions). As a broad general rule, there should be no nexus between the gift transaction and County employment.

The Ethics Commission has previously opined that a gift or prize won by chance not obtained through the performance of an official duty does not present a conflict of interest. *See* INQ 12-162; INQ 16-173; and INQ 2021-112. Consequently, in INQ 12-162, a County Department Director who won a prize through a raffle at a conference she attended was advised that she may

accept the gift won by chance, which was not obtained through an inducement to take a legal action or perform a legal duty.¹

If the raffle prize is funded or donated by a County vendor, then employees may likewise accept the gift without running afoul of the Ethics Code as long as the raffle was not limited to participation by County employees. *See* INQ 11-163 (County employees may participate in raffles and accept prizes provided by County vendors as long as the gifts were not solicited and the raffle is also opened to the public); and INQ 16-173 (it is permissible for a County employee to participate in a survey where the County employee's name was entered in a drawing for a free course, provided the drawing was open to all customers, not just County employees.)

The reasoning underlying these various opinions would at first glance seem to suggest that employee acceptance of a prize won through the County wellness program would violate the Ethics Code's gift section inasmuch as the general public is not able to participate in the raffle, where prizes are funded by a County contractor, and only County employees are eligible to participate.

However, a closer analysis suggests that the wellness program is not a closed raffle that exclusively awards gifts or prizes to County employees. Rather, the gifts or prizes are the fruits of a "public benefit" clause in the County's contract with AvMed and that the rationale for the program and award distribution process is consistent with the Ethics Commission's recommended guidelines.

In 2012, the Ethics Commission issued its Guidelines and Recommendations Regarding "Public Benefit" Clauses in Certain Government Contracts. The Ethics Commission report was highly critical of the use of "public benefit" clauses to require County and municipal contractors, often event promoters, to provide event tickets to local government that were distributed to elected officials, government executives, their friends and family, and their attendance served no public purpose.

However, the Ethics Commission did opine that there were permissible instances where allocation of benefits to government employees is appropriate "where there is a genuine, legitimate and articulable public purpose." Also, the distribution must be pursuant to an objective process that does not permit manipulation or control by local government. One permissible use described in a non-exhaustive list is the allocation of contractor funded gifts or benefits to "employees as part of an employee recognition program with defined criteria."

¹ *See also* INQ 20-71 (random drawings conducted by Pluralsight, a County vendor, through its Tour de Tech Campaign may be accepted by ITD employees because they would be won by chance and not awarded in exchange for any duty or act, they might be involved with in their County position); INQ 11-04 (a \$50 gift card donated by a County vendor and won in a random drawing at a seminar is not a reportable gift).

Opinion:

County employees who voluntarily choose to participate in health and wellness promoting activities and accrue points, as part of a program funded by the County's contracted third-party administrator for the self-funded group healthcare program, may accept prizes when selected by the contractor from a pool of highest point-getters.

The limitations in Section 2-11.1(e), Gifts, of the County Ethics Code do not prohibit employees from accepting these prizes because the wellness initiative does not qualify as a closed raffle funded by a County contractor.

Rather, promoting healthy lifestyle activities including health screenings and physical activity that contributes to employee good health is a laudable public purpose. Also, the allocations are part of an objective program that is not controlled by the County or its employees. This program is an appropriate and permissible use of a public benefit clause contained in the County's contract with AvMed, its third-party comprehensive health plans administrator.

It is recommended that employee recipients of gifts or prizes valued at over \$100 should report these under the gift disclosure provisions contained in Section 2-11.1(e)(4), Gifts, of the Ethics Code.

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. Additionally, guidance regarding Florida's Sunshine Law may be obtained from the Florida Attorney General.

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.