



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: India Singletary, Corrections Technician, Miami-Dade Corrections and Rehabilitation Department

Banicka Johnson, Assistant Asset Management Project Administrator, Public Housing and Community Development Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-149, Section 2-11.1(c), County Conflict of Interest and Code of Ethics Ordinance, Limitations on Contracting with the County

DATE: November 22, 2021

CC: COE; John Vanegas, Accountant 3, Public Housing and Community Development (“PHCD”); Simona Marlow, Senior HR Manager, PHCD

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your ability to contract with the County’s Public Housing and Community Development Department (“PHCD”) as a vendor/landlord under the Emergency Rental Assistance Program (“ERAP”),¹ administered by PHCD.

Facts

You, Ms. Singletary, are employed by the Miami-Dade Corrections and Rehabilitation Department (“MDCR”) as a Corrections Technician. Your job duties include surveillance, writing reports, answering phones, and key control. You would like to contract with PHCD as a vendor/landlord under the ERAP, which is administered by PHCD. Your MDCR job duties do not include any oversight or administration of the ERAP program.

¹ The ERAP is a federally funded program that provides rental assistance for up to eighteen (18) months for eligible tenants in arrears of rent payments due to financial hardships resulting from the COVID-19 pandemic. See <https://www.miamidade.gov/global/housing/emergency-rental-assistance-program.page>.

Regarding your immediate family members, your daughter – Ms. Banicka Johnson – is employed by PHCD as an Assistant Asset Management Project (“AMP”) Administrator for the Public Housing Division of PHCD. Her job duties primarily include management of the Gwen Cherry 15, Gwen Cherry 16, and Allapattah Homes properties, where she inspects the units and completes annual examinations. The Public Housing Division of PHCD does not administer or oversee the ERAP program, and Ms. Johnson’s current position does not and will never afford her the opportunity to do so.

Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting with PHCD to participate in the ERAP as a vendor/landlord.

Discussion and Opinion

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County, so long as the contract does not interfere with the full and faithful discharge of the County employee’s duties, the County employee does not participate in negotiating or awarding the contract, and the County employee’s job duties will not require him or her to be involved with enforcing or overseeing the contract. However, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she, or one of his or her immediate family members, works. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2). The County Ethics Code defines immediate family as “spouse, domestic partner, parents, stepparents, **children** and stepchildren.” County Ethics Code § 2-11.1(b)(9) (emphasis added).

Nevertheless, the Commission on Ethics has opined that a PHCD employee working as a Principal Planner could contract with PHCD as a Section 8 landlord because the division of PHCD that administered the Section 8 program was distinct and separate from the division of PHCD in which the Principal Planner worked. RQO 12-06; *see also* INQ 14-173; *cf.* INQ 16-99 (a PHCD employee may not participate in the Housing Choice Voucher program because she worked in the division that administered the program); H-INQ 21-32 (an employee of Nan McKay, Inc., a third-party company contracted with PHCD to administer housing programs, working as an ERAP Specialist may not contract with the County to receive ERAP benefits).

Here, after reviewing the facts presented to us, we conclude that **you may contract with PHCD** to participate in the ERAP as a vendor/landlord. Your employment as a Corrections Technician with MDCR will not require you to be involved in the administration of the ERAP. Furthermore, though your daughter, Ms. Johnson, is employed as an Assistant AMP Administrator for the PHCD Public Housing Division, the Public Housing Division is not the division that administers or oversees the ERAP. Accordingly, because Ms. Johnson's employment for PHCD is separate from the division that administers and oversees ERAP, and she will never have occasion to review, approve, or administer ERAP applications, then her employment with PHCD does not give rise to a conflict of interest. *See* County Ethics Code § 2-11.1(c)(2); RQO 12-06. Therefore, provided that your current or future job responsibilities with MDCR and Ms. Johnson's current or future job responsibilities with PHCD do not require your involvement in any aspect of the ERAP, you may contract with PHCD to participate in the ERAP as a vendor/landlord.

Additionally, neither you nor Ms. Johnson may lobby the County to participate in the ERAP. This means that you may not contact anyone within the County in an attempt to influence a decision about any contract that you are seeking with the County. *See* County Ethics Code § 2-11.1(m)(1).

Furthermore, the County Ethics Code prohibits County employees from exploiting their official position. This means that neither you nor Ms. Johnson may use your County positions to secure special privileges or exemptions with respect to your participation as a vendor/landlord in any PHCD program. *See* County Ethics Code § 2-11.1(g).

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from the department that employs you and/or Ms. Johnson, or under state law, other conflicts may apply. If you have additional questions regarding possible conflicts based on your County department directives, contact your respective department supervisors or the Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

Please submit this opinion to the Public Housing and Community Development Department for inclusion in your file. The Commission on Ethics does not submit this memorandum on your behalf.

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 Commission on Ethics 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.