



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Dayron Sanabria Caceres
Administrative Officer 3
Internal Services Department

Timothy Saller
Chief, Human Resources
Internal Services Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-111 Conflicting /Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: August 2, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts: You are employed as an Administrative Officer 3 for the Internal Services Department (ISD). You would like to engage in outside employment as a janitor for Professional Cleaning Solution (PCS), a County vendor.

As an Administrative Officer 3, you will be handling special HR projects including assignment and trainings for disaster assistance employees (DAEs), selection of employee of the quarter, and other HR initiatives.

PCS is a professional office and commercial cleaning company. PCS is a County vendor which provides services to the County. In your proposed outside employment with PCS, you will be employed as a janitor responsible for cleaning and disinfecting designated areas at the South-Miami Dade Cultural Arts Center. The Center is located at 10950 SW 211 Street, Cutler Bay, Florida 33189 and is a venue of the Miami-Dade County Department of Cultural Affairs.

In your County position, you advise that you do not have the authority to approve or disapprove any agreements for services between the County and PCS and no involvement in the selection, oversight, or administration of the County contract with PCS. You will not be required to come into contact with the same people, clients, or entities in your position with the County and PCS. You will not utilize the same or similar resources for your outside employment. Your outside employment would require very minimal interactions with County employees outside your department, such as a request for cleaning in an area. You also do not work in a position that requires you to recruit vendors, contractors, bidders, or members of the public that could use your outside employment services. Your work for PCS would be performed outside of your County hours. Further, your supervisor has confirmed that your County department does not utilize the services of PCS.

In reviewing this matter, it is noted that you have sought and obtained a prior ethics opinion regarding your outside employment. *See* INQ 21-76. However, the circumstances of the prior ethics opinion have changed as you have taken a new position with a different department. In opinion INQ 21-76, the Commission determined that a conflict existed between your County employment with the Animal Services Department (ASD) and your potential outside employment with PCS because PCS provided services to ASD, the department you worked at the time, and your former County duties required you to direct, monitor, and oversee the work performed by PCS employees within your department. Notably, you are no longer employed at ASD and PCS does not service ASD, your current department.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a janitor for PCS, a County vendor.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds that it is contrary, detrimental or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

Generally, the Miami-Dade 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 16-02 and INQ 11-67. However, the Ethics Code does prohibit County employees from engaging in outside employment that is likely to create conflicts of interest between the employee's County responsibilities and their outside job duties.

After reviewing the facts presented here, we find that your outside employment with PCS, a County vendor, is not likely to cause conflicts of interest between your private interest and your public duties. There are several factors which have been considered in support of finding no conflict with your outside employment:

- There is no overlap between your public duties as an Administrative Officer 3 with ISD and your perspective work with PCS;
- You will not assist the same clients in both positions;
- You will not use the same resources in both positions;
- Your work for PCS would be performed outside of your County hours;
- You do not oversee or have any involvement with PCS' contract with the County including its administration or oversight;
- PCS does not service your current County department;
- You have no authority over PCS employees in your current County position; and
- Your outside employment does not require you to interact with other County ISD employees on a routine basis.

Consequently, your outside employment is not likely to impair your independence of judgment in the performance of your County duties. 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 any area or facility which is serviced by your outside employer in any capacity. *See* RQO 16-02.
- 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 PCS. *See* RQO 16-02.
- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.

- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of PCS, or for the benefit of PCS clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself, PCS, or PCS clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent PCS or PCS clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for PCS, it is important to note that you would be prohibited from doing any such activities on behalf of PCS or its clients.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County’s Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County 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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.