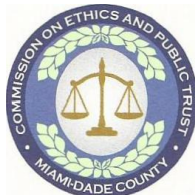


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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August 30, 2021

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Re: INQ 2021-120, Sections 2-11.1(c), (d), (q), Miami-Dade Ethics Code, Section 2-612,
Code of the City of Miami, Former Employee Contracting with the City

Dear Ms. Valencia:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking guidance regarding the application of the Miami-Dade County and City of Miami Ethics Codes to the Woman’s Fund of Miami Dade-Dade, Inc., a Florida nonprofit entity that seeks to contract with the City of Miami as a grant recipient.

Facts:

You are the former Director of Code Compliance for the City of Miami (Miami) and separated from municipal employment less than two years ago.

You also serve as an unpaid Director for the Women’s Fund of Miami-Dade County, Inc. (Women’s Fund). The Woman’s Fund is a Florida nonprofit corporation, and it describes its mission as improving the lives of women and girls through action, advocacy, and investment in collaborative initiatives that generate impact across our four pillars: Economic Mobility, Leadership, Health & Well-being, and Freedom from Violence.

The Women’s Fund has been recommended for a grant award from the City of Miami Mayor’s Office. It is anticipated that this grant award will require the parties to enter into a grantor/grantee contract.

Issue:

Whether the County or City of Miami Ethics Codes prohibit a nonprofit from receiving a grant award from the City of Miami, if a former employee, less than two years from separation, serves a voluntary, non-compensated Director for the nonprofit.

Discussion:

The County Ethics code does not prohibit *former* employees from contracting or transacting with the County or Miami. Rather, Sections 2-11.1(c) and (d) of the County Ethics Code prohibit a *current* employee from entering into any contract or transacting business with the County or Miami in his or her individual capacity, through an immediate family member or through a firm, corporation, partnership, or business entity (collectively “entity”) if the employee or family member has a controlling financial interest in the entity.

While there is no former employee contracting bar in the County Ethics Code, Section 2-11.1(q) of the Code does prohibit a former employee from *lobbying* the County or Miami for a period of two years after the employee has separated from employment.¹

Conversely, Sections 2-612 (a), (b) and (c) of the City of Miami Code prohibit a former employee, and his or her immediate family members, from contracting or transacting any business with the city or any person or agency acting for the city, for a period of two years after the officer, official, or employee has left city service or terminated city employment.²

Moreover, while the City of Miami Ethics Code does contain the aforementioned two-year bar that prohibits former employees or their immediate family members from contracting or transacting with the Miami, that conflict of interest ordinance does not prohibit an affiliated firm or a business from entering any contract or transacting with the city. Simply stated, unlike the County Ethics Code that extends its prohibitions on some categories of covered persons to their affiliated businesses, the Miami Conflict of Interest Ordinance does not.³

¹ While not relevant to this opinion, the County’s two-year bar on former employee lobbying contained in subsection (q) of the County Ethics Code, does not apply to employees who become employed by 501(c)(3) non-profit entities and who lobby on behalf of such nonprofits in their official capacities. *See* INQ 13-176, INQ 15-66

² In City of Miami City Attorney Opinion 07-0001, language addressing Section 2-612 of the City Code suggests that a conflict of interest attaches when the city (former) employee has an **ownership interest** in the entity seeking to contract with the City. Applying that principle, a former employee who works on an uncompensated basis with a non-profit entity would not be precluded from accepting a grant from the City.

³ *See generally* INQ 19-54 (Former city board member is barred from entering into a contract with Miami pursuant to Section 2-612 of the Miami Ethics Code, but a firm in which the board member has a financial interest is allowed to contract because the city’s conflict of interest ordinance does not prohibit an affiliated firm or business from entering a contract or transacting with the City).

Opinion:

Consequently, it does not appear that neither Sections 2-11.1(c) and (d) of the County Ethics Code or Section 2-162 of the Miami Ethics Code would prohibit the Women's Fund- a non-profit organization- from contracting or transacting with the City of Miami as part of its application or receipt of a grant, in spite of the fact that Ms. Valencia is within two-years of separation as Director of Code Compliance for the City of Miami.

However, in order to avoid an appearance of impropriety, Ms. Valencia should recuse herself from any involvement with the grant, i.e., completing the application, engaging in lobbying activities on behalf of Women's Fund, or executing the grant agreement with the City, thereby allowing other members of the board of directors of the entity to perform these tasks.

This opinion is limited to the facts as presented them to the Ethics Commission and is limited to an interpretation of the County and Miami Ethics Codes only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

Thank you again for seeking ethics guidance and do not hesitate to contact us if you would like further guidance.

Sincerely,



Jose J. Arrojo
Executive Director



Martha Diaz Perez
General Counsel

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.