


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Andrea I. Etcheverry Q., E.I., Engineer 2
Utilities Development Division, Plans Review Section
Water and Sewer Department

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2021-123, Section 2-1.11(q), County Ethics Code, Two-Year Rule

DATE: September 7, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and requesting our guidance regarding limitations on your interaction with Miami-Dade County, within two years of separation as an Engineer 2, for the Utilities Development Division, Plans Review Section of the County's Water and Sewer Department (WASD).

Facts:

You are currently employed as an Engineer 2, in the Utilities Development Division, Plans Review Section of the County's WASD. You have been employed with the County for approximately five years and are contemplating separating from County service and taking a position with an engineering consulting company which submits water and sewer design plans to WASD for approval. Specifically, as part of your employment with the consulting firm, you anticipate that you will be designing and submitting water and sewer plans for approval.

Issue:

Whether you may accept employment with a private firm within two years of separation from County employment when in your new position you will be designing and submitting water and sewer plans for approval by the County and more specifically, your prior department, WASD.

Analysis:

Section 2-11.1(q), the “Two-Year Rule” found in the Miami-Dade County Ethics Code, prohibits former County employees from “lobbying” the County for a period of two years following separation.

Specifically, the relevant section of that rule prohibits a County employee, for a period of two years after his or her County service has ceased from:

...lobby[ing] any county officer, department personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid request for ruling, or other determination, contract, claim, controversy, charge accusation , arrest or other particular subject matter in which Miami-Dade Count or one of its agencies or instrumentalities is a part or has nay interest whatever, direct or indirect.

The post-employment lobbying activity prohibitions contained in subsection (q) of the Ethics Code are more expansive than those found under the general lobbying ordinance.

Whereas the County’s lobbying ordinance at Section 2-11.1(s), defines “lobbying” as advocating for matters that will foreseeably be decided by the Commission, Mayor, boards, or committees, the Two-Year Rule includes advocating for actions or decisions that may be made at the sole discretion of any County personnel. See RQO 12-09; RQO 13-07.

In RQO 12-09, the Miami-Dade Commission on Ethics explained the parameters of the prohibition with respect to allowable meetings with County staff as follows:

These meetings must be held for informational purposes only and not for the purpose of influencing any recommendations or other actions on the project. You are prohibited from arranging and/or *participating in meetings* with City [County] officers and staff... if the meetings are convened for the purpose of influencing elected officers and/or City [County] employees to take an official action or make an official decision. (*emphasis added*)

Consequently, you may not attempt to persuade County staff, whether in person or by written communication, to take a particular course of action, nor may you participate in advocacy. The best course of action is not to attend these meeting.

You would also be prohibited from making presentations before County selection committees, boards and agencies, the Board of County Commissioners and its and committees and subcommittees. This prohibition is broad and covers any activity where you would be publicly identified as part of a lobbying team. See RQO 04-34 (citing RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team).

You are however allowed under subsection (q) of the Ethics Code to share institutional knowledge regarding County procedures with your private employer or its clients, and to provide guidance regarding interactions with the County. See INQ 20-63. Direct meetings and contacts between you and County personnel are also permissible *as long as there is no advocacy* involved in the interactions and you are not seeking to influence County personnel. See INQ 20-63.

You are simply cautioned against engaging in any action that might be perceived as advocating or seeking to influence County elected officials or personnel as this this would be a violation of the County's Two-Year rule.

As regards your work for your new employer with private clients or other local, state, or federal government entities, the only applicable prohibition would be under Section 2-11.1(h) of the Ethics Code. That section would prohibit you from engaging in any employment or engaging in any business or professional activity where you might reasonably be required or induced to disclose any confidential information garnered or gained by you as a result of your former County position.

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 Ethics Commission.

We appreciate your consulting with the Commission so that your prospective employees will avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance or have the employees contact us directly.

Conclusion:

You are not prohibited from accepting employment with a private firm within two years of separation from County employment when in your new position you will be designing and submitting water and sewer plans for approval by the County and more specifically, your prior department, WASD.

However, you must not engage in any advocacy activities as regards the County nor may you participate in any meetings with County officers and staff if the meetings are convened for the purpose of influencing County elected officers or employees to take an official action or make an official decision

This opinion only construes the Miami-Dade Ethics Code, and it is based on the facts as you have presented them to the Ethics Commission.

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.

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.