



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Ricardo Ayala
Construction Manager 2
Miami-Dade Parks, Recreation, and Open Spaces Department (PROS)

Joel Arango
Construction Manager 3
Miami-Dade Parks, Recreation, and Open Spaces Department (PROS)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-54 [Outside Employment § § 2-11.1(j) and k(2), County Ethics Code]

DATE: March 29, 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, Mr. Richardo Ayala, are employed as a Construction Manager 2 at the Miami-Dade Parks, Recreation, and Open Spaces Department (PROS). Your job responsibilities include overseeing and managing the construction activity of PROS projects and coordinating with design consultants with the development of PROS projects.

You would like to engage in outside employment as a freelance civil engineer. You do not own a company. You are seeking to provide civil design services to architectural firms that develop private residential projects.

You advise that you are not a County vendor nor are you seeking to be a County vendor. You specifically note that the architects that you intend to work with are not County vendors. You will also conduct your outside employment outside of your County hours and will not conflict with your County employment. You further advise that your work would not require the use of any equipment or resources which you use in your County

employment nor would you work with the same people or similar entities that you currently work with in your County employment.

Issue: Whether any prohibited conflicts of interest exist between your employment as Construction Manager 2 for PROS and your prospective outside employment.

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.

In consideration of your inquiry we must look to several factors, one of which is whether there is similarity in your duties as a Construction Manager 2 and your prospective outside employment as a freelance civil engineer for architectural firms that are developing residential projects. In this instance, both positions appear to require you utilize the same knowledge base however, there is no indication that a prohibited conflict of interest exists.

The Ethics Commission has previously opined that a similarity between an employee's County duties and his or her outside employment duties does not indicate, by itself, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment particularly as you have indicated that you will not work for any County vendors; you will only work on residential projects; you will not use any equipment or resources which you use in your County employment; and you will not work with the same people or similar entities that you currently work with in your County employment. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment does not in and of itself create a conflict of interest. *See* INQ 20-43.

Nevertheless, you must abide by certain limitations and cautions outlined below to avoid a conflict:

- 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, or for the benefit of your 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, or your clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent your 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 in your proposed outside employment, it is important to note that you would be prohibited from doing any such activities on behalf of your 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.

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.

