



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Jessica L. Blackwell, Property Management Landscape Architect,
Miami-Dade County Parks, Recreation and Open Spaces Department

FROM: Gilma Diaz-Greco, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-62 [Recommending Professional Services, Section 2-11.1(p),
County Ethics Code]

DATE: April 9, 2021

CC: All COE Legal Staff

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust (COE) and requesting our guidance regarding recommending professional services.

Facts:

You are a Project Manager in the Planning, Research, Property, and Construction Division at Miami-Dade County Parks, Recreation, and Open Spaces Department (MDPR). You advise that as part of your County job duties you are currently working with the Florida Department of Transportation (FDOT) and their engineering consultant in the development of a shared use path in a County park. The engineering consultant firm has asked if they can include you as a reference given your County involvement and oversight of the FDOT-MDPR project. The engineering firm is pursuing a shared use path project for the Village of Pinecrest.

You stated that you currently do not have any knowledge regarding whether the County will be involved in any way in administration, oversight, permitting, funding, etc. of the Village of Pinecrest shared path project. You also state that you are not serving on any Selection Committee that is or might be related to this project.

Issue:

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) allows you to provide a reference to a County vendor/consultant, with which you are familiar through your County position in connection with the firm's efforts to obtain work on a municipal shared path program.

Discussion:

There are several sections of the County Ethics Code and COE opinions that must be considered in reviewing this matter.

With respect to providing a reference for a person or firm involving any transactions with the County, Section 2-11.1(p) of the County Ethics Code prohibits County employees from recommending the services of a lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the County or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County officials or employees. For example, in RQO 05-27, the COE opined that County employees may provide references where County administrative orders, ordinances, or departmental policies require County employees to serve on County selection committees and the process also requires references to be provided regarding similar services that the applicant firm had provided to the County or other firms for similar service. The COE explained that in that type of situation, providing references is considered part of the County employees' public duties. However, the COE noted that restrictions apply where the reference is provided after the Cone of Silence takes effect. I previously emailed you RQO 05-27 and discussed the restrictions. I am also attaching the RQO to this memorandum so that you may use it for future reference.¹

Regarding providing references for a vendor or consultant involved in County projects, where the firm is seeking work outside of County government; there is generally no provision in the County Ethics Code that explicitly prohibits a County employee from serving as a reference for a County vendor/consultant, with which they are familiar through their County position, in connection with the firm's efforts to obtain work outside County government. However, pursuant to Section 2-11.1(p), the employee should ensure that the project does not involve any overlap between County oversight and the project performed outside of County government.

Please note that the COE has stated in previous opinions that, while section (p) does not address the issue of County employees providing letters of reference for a County Contractor when those recommendations are not made to assist in a transaction which

¹ Please note that RQO 05-27 states that a proposer may not seek a professional reference from a **Miami-Dade County selection committee member** but may use a prior reference it obtained before the advertised solicitation. See RQO 05-27. In this case, you have specifically stated that you do not serve on any Miami-Dade County selection committee.

involves the County or its agencies, such letters of reference should avoid express advocacy which could be construed as lobbying and there should not be any payment or other incentive for providing the reference. *See* INQ 13-318 and INQ 12-52. The COE has therefore suggested that County employees should only respond to inquiries rather than engaging in any express advocacy for a County contractor/County vendor; and that the County employee should also obtain approval from their supervisor prior to providing the reference. *See* INQ 16-47 and INQ13-318.

Other sections of the County Ethics Code must be considered when providing a reference in connection with a firm's efforts to obtain work outside of the County:

- Sec. 2-11.1(g) prohibits County employees from exploiting County resources to secure special privileges or exemptions for him/herself or others. We have not interpreted that section to disallow a County employee/official from serving as a reference for a County vendor seeking additional work outside of the County, even where the employee/official is identified in the communication by his or her official title. *See* INQ 17-243, INQ 10-133, INQ 12-175. However, you are cautioned to avoid excessive use of County resources for any project that may not serve a public purpose. *See* RQO 00-15, RQO 02-17; and INQ 13-144.
- Section 2-11.1(h) prohibits County employees from accepting employment or engaging in any business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by him or her by reason or his or her official position, nor shall he or she in fact ever disclose confidential information garnered or gained through his or her official position with the County, nor shall he or she ever use such information, directly or indirectly, for his or her personal gain or benefit. Therefore, you must ensure that your providing a reference would not require you to disclose confidential information acquired through your position at the County.

Conclusion:

The County Ethics Code would prohibit you from providing references to any person or firm to assist in any transaction involving the County or any of its agencies, unless it would be required by the employee's public duties such as serving on selection committees under the limitations outlined in COE opinions such as RQO 05-27. Given the need to analyze specific facts, we would advise that you request an ethics opinion prior to providing a recommendation to a person or firm to assist in any transaction involving the County or any of its agencies.

While it would be permissible for a County consultant/County vendor to utilize you as a reference in connection with the firm's efforts to obtain work outside of County government, based on your familiarity with their work in your County position, consistent with the COE prior opinions, we recommend that such letters of reference avoid express advocacy which could be construed as lobbying and there should not be any payment or other incentive for providing the reference.

Further, in addition to the considerations previously mentioned above, please obtain approval from your supervisor prior to providing the requested reference.

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.