



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: Manuel Betancourt
Meter Technician
Miami-Dade Water and Sewer Department

Mario Dominguez
Water Meter Repair Supervisor
Miami-Dade Water and Sewer Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-64 Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: April 14, 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 a Water and Sewer Meter Technician for the Miami-Dade Water and Sewer Department (WASD). You would like to engage in outside employment as the owner of Backflow Master Inc.

Your current job duties as a Water and Sewer Meter Technician include changing meters and pipefitting such as repairing small leaks, street leaks, and low water pressure.

You are the owner of a company registered with the State of Florida under the fictitious name of Backflow Master Inc. (Backflow). Your work with Backflow will include the commercial and

residential certification of backflows¹ throughout Miami-Dade County. As part of the certification, you test the backflow and then submit the results through the computer.

You advise that Backflow is not a County vendor nor is it seeking to be a County vendor. Your work with Backflow would occur outside of your County hours. 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 clients.

Issue: Whether any prohibited conflicts of interest may exist between your employment as a Water and Sewer Meter Technician for WASH and your prospective outside employment for your privately-owned company, Backflow.

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 Water and Sewer Meter Technician for WASH and your prospective work with Backflow, the primary concern noted in your supervisor's request. In this instance, both positions require you utilize the same knowledge base involving pipefitting; 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

¹ Backflow is the undesired reversal of flow of water and/or other substance into the potable water supply, via a cross-connection, due to a change in pressure caused by either backpressure or backsiphonage.

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 provided any necessary limitations are imposed. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment for a privately owned company 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, for the benefit of Backflow, or for the benefit of Backflow 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, Backflow, or Backflow clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent Backflow or Backflow 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 Backflow, it is important to note that you would be prohibited from doing any such activities on behalf of Backflow 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.