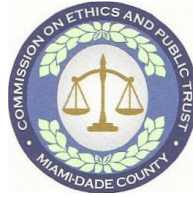


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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May 13, 2021

Via U.S. Mail & email:
bottinger@axogeninc.com

Brad Ottinger, Esq.
General Counsel and Chief Compliance Officer
Axogen, Inc.
13631 Progress Boulevard, Suite 400
Alachua, Florida 32615

Re: INQ 2021-83, Section 2-11.1(s), Lobbying, Miami-Dade Code, Axogen Sales
Representatives at Jackson Health System Sites in Miami-Dade County

Dear Mr. Ottinger:

Thank you for consulting with the Miami-Dade County Commission on Ethics and Public Trust regarding the application of Section 2-11.1(s) of the Miami-Dade Code to the activities of Axogen representatives selling nerve repair products at Jackson Health System sites in Miami-Dade County.

You have advised that Axogen, Inc. is a publicly traded company, incorporated in the State of Minnesota.¹ Axogen self-describes as a leading company focused on the science, development, and commercialization of technologies for peripheral nerve regeneration and repair. Axogen representatives are engaged as sales representatives at Jackson Health System (JHS) sites in Miami-Dade County, Florida. The representatives are advocating JHS’s procurement of Axogen surgical products for various nerve damage repair procedures.

During my discussions with Axogen representatives and counsel, I advised that as a preliminary matter, the title of Section. 2-11.1(s) of the Code is misleading. References to that section as the “County Lobbyist Ordinance” ignore the fact that the section contains very broad language and as a result it applies not only to traditional third-party, compensated, elected official lobbying

¹ For purposes of this ethics opinion, “Axogen” will be used to refer to the publicly traded company or any of its subsidiary entities employing sales representatives engaged with JHS in Miami-Dade County, Florida.

activities relating to legislation, policy, and procurement, but also to a range of activities by sales representatives, account executives, and other professionals involved in the County's public procurement process. The section should more accurately reference vendor or sales representatives.

Section 2-11.1 (s) of the Code, applies to three categories of persons transacting with the Miami-Dade Board of County Commissioners (BCC), County boards/agencies, County Departments, and in the case of Axogen representatives, the Public Health Trust/Jackson Health Systems (JHS):

- Those that seek to encourage the passage, defeat, or modification of an ordinance, resolution, action or decision of the Board of County Commissioners (BCC) or Public Health Trust (PHT); and
- Those that seek to encourage the passage, defeat, or modification of any action, decision, or recommendation of the Mayor or the JHS CEO or any other County or JHS board or committee; and
- Those that seek to encourage the passage, defeat, or modification of any action, decision, or recommendation of County or JHS personnel, during the time period of the entire decision-making process, including negotiation of contract terms, on such action, decision, or recommendation which foreseeably will be heard or by the BCC, PHT or a County or JHS board or committee.

Again, this section is not limited in its application to "lobbyists" as traditionally defined, but rather, it applies to persons advocating policy, legislation *and* procurement decisions.

In procurement scenarios, representatives are encouraged not to focus on self-description, their work titles or product line, or whether the procurement goal is an initial, successor, or maintenance contract. Rather, the emphasis should be on whether the representative is engaged in one of the functions described above: procurement advocacy or negotiation.

If in proposing or selling a service or product, representatives are encouraging purchase or procurement actions or decisions by County or JHS staff, then the section will likely apply to those persons and activities. Likewise, if there is a "back and forth" between the vendor representatives and County or JHS officials over substantive terms of an agreement that go beyond scrivener's or drafting corrections, then again, the section will likely apply.

In this jurisdiction, because of the section's broad language, sales representatives or contract professionals that engage in negotiations, lawyers, architects, engineers, and traditional third-party retained lobbyists are all required to register pursuant to the section.

Therefore, to reiterate, in our guidance we encourage persons that we consult with to focus not on their professional self-description but rather to focus on their negotiation and advocacy activities vis-à-vis the County or JHS.

Also, in procurement scenarios, the section applies to not only traditional competitive procurement processes but also sole source procurement and renewals. Again, the focus of the section should not be on the competitive or non-competitive nature of the procurement, or whether it is a new or renewed procurement, but rather on the vendor's negotiation and advocacy activities.

Applying these general interpretation principals to what has been described as Axogen's interaction with JHS personnel, we advise that while Axogen representatives are not acting as traditional third-party lobbyists, we are obliged to opine that the broadly worded, Section 2-11.1(s) of the Code applies to the representatives engaged in procurement advocacy or "sales" activities at JHS sites. *See* INQ 2020-33.

Going forward, please note that after the product or service has been purchased by the County/JHS or the contract has been approved/executed by the hospital staff, Axogen representatives who are simply servicing the contract, would not be required to register under Section 2-11.1(s) of the Code. *See* RQO 06-04 (The County Code of Ethics does not require County vendors to register as lobbyists to provide technical assistance after the product has been purchased by the County); *See also* RQOs 05-134 and RQO 05-114 (The Ethics Commission opined that there is no need to register as a lobbyist when a vendor's function or activity is part of the scope of services of its current contract); and INQ 18-218 (The Ethics Code does not require that a medical product sales representative register as a lobbyist when he services an existing contract with Jackson Health Systems/Public Health Trust).

I hope that this ethics guidance specifying that while Axogen representatives are not engaged in traditionally defined third-party lobbyist activities, their sales activities at JHS, pursuant to Section 2-11.1 (s) of the Code in this jurisdiction requires registration. Please do not hesitate to contact me should you or your colleagues require any further assistance.

Good luck in your continuing procurement activities with Miami-Dade County.

Sincerely,



JOSE J. ARROJO
Executive Director

cc: Michael Dann (via email only to expedite delivery: mdann@axogenic.com)
Adam Hersh, Esq. (via email only to expedite delivery: adam@bluechip.law)