



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: John Tanner, Jr.
Contract Compliance Officer 1
Internal Services Department - Small Business Division

Alice Hidalgo-Gato
Small Business Division Section Chief
Internal Services Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-16, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: February 3, 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 Contractor Compliance Officer 1 for the Internal Services Department Small Business Division. You would like to engage in outside employment as a construction project manager for your private company, Gold Tree Construction LLC. You are also a certified building contractor with the Florida Department of Business and Professional Regulation.

As a Contractor Compliance Officer 1, you perform administrative and field site work (photographs and employee interviews) for the enforcement of Miami-Dade County Codes such as Responsible Wages and Small Business Enterprise, Construction Services Program assisting the Compliance Officer 2 (CO), as needed. You are responsible for compiling audits and analyzing certified payroll records and related documents to verify compliance with wage requirements. You submit the compiled documents to the CO for review, which is then submitted to management for review, questioning, revisions, and processing. You collect and review fully executed subcontractor agreements, employee interviews, and related documents to verify compliance with small business requirements; prepare wage analysis generated through electronic system and

notices to firms which are submitted to CO when violations are found for review then submitted to management for review, questioning, revisions, and processing. You investigate discrepancies to determine misrepresentation of information provided by contractors or workers (all investigations are submitted to and reviewed by CO thereafter submitted to management). You also collect and deposit monetary penalties and underpaid wages for deposit into the County Trust Fund.

Your private company, Gold Tree Construction LLC (Gold Tree) will provide residential construction and renovation services for your family and the general market. You as owner will provide general management and project planning. Gold Tree is not nor is it seeking to be a County vendor. You advise that your work with Gold Tree would occur outside your County hours. You also indicate 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 Contractor Compliance Officer 1 for the Internal Services Department Small Business Division and your prospective outside employment for your privately-owned company, Gold Tree Construction LLC.

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 prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors 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 the ultimate 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 12-07; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

The Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment that is likely to create conflicts of interest between the employee's County responsibilities and their outside job duties. After reviewing the facts presented here, we find that your outside employment of running your privately owned company is not likely to cause conflicts of interest between your private interest and your public duties. This is because there is no overlap between your public duties as a Contractor Compliance Officer 1 and your outside employment. Here, Gold Tree does not contract and is not seeking to contract with the County; it will perform

work for private homes and buildings; it does not perform work for any other entities that are County vendors; and the work would be performed outside of your County hours.

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 may not conduct business with and/or employ any contractor or subcontractor with which you encounter, supervise, inspect, oversee, or are otherwise involved with in the performance of your County duties. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.**
- 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 Gold Tree, or for the benefit of Gold Tree 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, Gold Tree, or Gold Tree clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent Gold Tree or Gold Tree 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 Gold Tree, it is important to note that you would be prohibited from doing any such activities on behalf of Gold Tree 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.