



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Samira Selah  
Contract Compliance Officer 2  
Miami-Dade Internal Services Department

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

**FROM:** Radia Turay, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2021-22 [Outside Employment § § 2-11.1(j) and k(2), County Ethics Code]

**DATE:** February 12, 2021

**CC:** All COE Legal Staff

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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 Contract Compliance Officer 2 in the Small Business Division at the Miami-Dade Internal Services Department (ISD). Your job responsibilities include documenting inquiries into allegations or appearance of conduct violating the Miami-Dade County Code; investigating allegations of fraud or misrepresentation by compiling, auditing and analyzing certified payroll records, subcontract agreements, employee interviews and other contract related documents for compliance monitoring; conducting research of local, state and federal laws, as it relates to the enforcement of small business programs and analyze the findings to determine the penalties and sanctions applicable on a case-by-case basis; conducting weekly site visits to conduct employee interviews and site observations; preparing quarterly status reports to Jackson Memorial Hospital (JMH) Executive staff under the County's Memorandum of Understanding (MOU); coordinating and hosting over 50 on-site and off-site workshops and presentations to disseminate information on the Small Business Development program and providing technical assistance to County Departments, firms, contractors and other user departments; supervising the work of assigned staff professionals engaged in various phases of the

compliance monitoring and enforcement process on the JMH team; assisting client departments with post-award compliance procedures and the County Attorney Office with preparation for Administrative Hearings and conducting post hearing compliance enforcement; implementing the Division's annual monitoring plan by monitoring and enforcing compliance of applicable codes and ordinances on JMH construction and architecture and engineering projects ranging from \$18,000 to \$128 million; serving as liaison between the Public Health Trust, Miami-Dade County, contractors, architects and elected officials on SBD requirements on capital improvement projects; and collaborating with contractors, user departments, sub-contractors and local public for business outreach events.

You would like to engage in outside employment as the owner/managing member of your privately-owned company, 3S Group, LLC (hereinafter "3S Group"). You explained that you founded the company for liability reasons, in order to obtain a general contractor license. You expressed an interest in possibly serving as the general contractor for the renovation of properties that you may purchase in the future. You have however stated that you have no present plan to purchase and/or renovate properties.

You advised that at this juncture, you do not intend to perform any work through 3S Group. You will not work with any County vendors/contractors/subcontractors. You are not seeking to become a County vendor. You indicated that you are keeping the company active however, so as to maintain your general contractor license.

Issue: Whether any prohibited conflicts of interest exist between your employment as a Contractor Compliance Officer 2 for the Internal Services Department Small Business Division and your prospective outside employment for your privately-owned company, 3S Group.

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.

As noted above, 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. With respect to government employees engaging in construction related projects, the Ethics Commission has previously opined that an employee could continue outside employment as an owner of a private construction related company where the private company did not contract with the County; did not engage in any work within the County; its subcontractors did not apply for, or were not issued, building permits in the County for any projects associated with the County; and it did not have any business relationships with any vendors engaged in construction for the County or reasonably anticipated to engage in construction for the County. See RQO 08-29, RQO 08-45, and INQ 16-234.

After reviewing the facts presented here, we find that your outside employment as the managing member of 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 2 and your outside employment. Here, 3S Group is not seeking to contract with the County; it does not hire or perform work for any County vendor/contractor/subcontractor; it will not apply for any building permits in the County for any projects associated with the County; and it will not do any work for or with any entity or individual, as you stated that you maintain the company for liability reasons in order to keep your general contractor license active. See INQ 17-137.

Nevertheless, you have expressed an interest in possibly serving as the general contractor for the renovation of properties that you may purchase in the future. Please note, in the event you perform any general contracting work through your company, 3S Group, you must abide by the 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 are prohibited from conducting business with and/or employing 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, or for the benefit of 3S Group. 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 3S Group. See Section 2-11.1(g), Miami-Dade County Ethics Code.

- You may not represent 3S Group 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 3S Group, it is important to note that you would be prohibited from doing any such activities on behalf of 3S Group.
- 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.

Further, you must immediately advise your department director and seek an opinion from the Ethics Commission, in the event that you decide to perform any work through 3S Group.

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.