



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Franklin C. Adams
Network Manager 2
Miami-Dade Water and Sewer Department

Leonardo Burgos
SCADA Division Chief
Miami-Dade Water and Sewer Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-42 Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: March 8, 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 Network Manager 2 for the Miami-Dade Water and Sewer Department (WASD). You would like to engage in outside employment as the owner of Timehri Networks, LLC (Timehri Networks). You would also like to contract with the County through Timehri Networks.

As a Network Manager 2 for WASD, you manage and prepare and the SCADA Infrastructure Unit budget, manage the SCADA network and servers to include the SCADA Production Servers, and establish software utilization standards and develop testing for SCADA software. You also analyze SCADA Division's performance data and trends, manage the SCADA Infrastructure Unit Operating and Maintenance (O&M) and Capital budgets, review, control and manage the procurement process for the SCADA Infrastructure Unit budgets, approve O&M and capital expenditures as well as Request of Stores (ROS) purchases. You supervise Network Manager 1, SCADA Operations Specialists and WS SCADA Support Specialists. Lastly, you define and oversee the strategic and day-to-day operations and effectiveness of the SCADA Division's cyber

security technology and programs and develop solutions for maintaining and replacing aging industrial control system software.

Your private company, Timehri Networks provides information technology (IT) consulting services for government and private company clients which includes management of the following client devices: computer hardware (network infrastructure, firewalls, switches, routers, printers, network copiers, servers, workstations, notebooks, netbooks, and tablets); computer software (applications, databases and productivity tools); data backup, including BDR (backup and disaster recovery), DRaaS (disaster recovery as a service) and managed storage; security, including anti-malware, encryption, endpoint security, data leakage prevention, VPN, etc.; help desk services for individual users and PC issues; NOC (network operations center) services for network alerts and troubleshooting; and broadband connectivity, telepresence, video conferencing, unified communications.

As the owner of Timehri Networks, your duties include performing IT consulting, accounting, financing, marketing, and management for the company. You also indicate that your work would not require the use of any equipment or resources which you use in your County employment. Your work with Timehri Networks will be conducted outside your County hours.

Timehri Networks is currently a County vendor and does not contract with WASD.

In reviewing this matter, it is noted that you have previously sought and obtained relevant ethics opinions. The facts presented in your prior opinions have not changed since the issuance of those opinions. See INQ 18-09 and INQ 11-102. In both INQ 18-09 and 11-102, the Commission determined that Timehri Networks may enter contracts with departments within Miami-Dade County excluding WASD as long as the contract does not interfere with the full and faithful discharge of your duties to the County. These opinions included limitations instructing you not to participate in determining the contract requirements or in awarding the contract, be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance, or work in any County department that will enforce, oversee, or administer your contract.

Analysis and Opinion:

Your inquiry involves several sections of the Miami-Dade County Ethics Code which are analyzed below:

A. Outside Employment

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. Consequently, inquiries concerning conflicting outside employment require consideration of a myriad of factors, one of which is, whether there is a similarity between the employee's County duties and his duties to the outside employer. However, 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. For example, in RQO 00-10, the Ethics Commission did not find a conflict of interest for a County employee working for WASD as a water treatment plant officer to engage in outside employment performing *similar* functions for a company which operates water treatment plants for entities not served by the County. Similarly, in RQO 04-168, the Ethics Commission opined that, *with limitations*, a County land surveyor may engage in outside employment as land surveyor for private clients, including other municipalities. Also, in RQO 12-07, the Ethics Commission concluded that, *with limitations*, a County liability claims adjuster at ISD-Risk Management could work as a private risk management consultant (performing similar duties).

Consequently, the fact that your duties with WASD and your privately owned company are similar does not preclude you from engaging in outside employment with Timehri Networks, albeit with limitations.

There are instances where, in addition to the similarity between the outside employment and the County position, the outside employer is a County vendor. Generally, the Miami-Dade County Ethics Code does not prevent an employee from being employed by a County vendor, *as long as the employee does not have any involvement with the vendor's contract*. *See* INQ 11-67. In this instance, you do not oversee or manage the County's contract with Timehri Networks nor does your position confer upon you any managerial functions upon his outside employer/County vendor. *See* INQ 15-115 (a surgical technician at JHS may engage in outside employment for a County contractor manufacturing surgical equipment because the employee is not involved with the contract/product acquisition.)

Consequently, while your outside employment may appear conflicting, pursuant to COE opinions, the facts provided herein, and your supervisor's willingness to approve your outside employment, the following limitations should be imposed in order to avoid a conflict under the Miami-Dade County Ethics Code:

- 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 Timehri Networks, or for the benefit of Timehri Networks clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- 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.

B. Contracting with the County

Once you have been granted permission to engage in outside employment by your department director, you may enter into a County contract through your privately-owned business, Timehri Networks, provided that the contract does not interfere with the full and faithful discharge of your duties to the County. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This includes the condition that you may not participate in determining the contract/workshop requirements or in awarding the contract. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract/workshops in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract/workshop. *See* Sections 2-11.1(c) and (n), Miami-Dade County Ethics Code. Consequently, Timehri Networks **may not** enter contracts with WASD.

C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about any contract Timehri Networks is seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code.

D. Exploitation of Official Position

Finally, the Miami-Dade County Ethics Code prohibits County employees from exploitation of their official position. This means that you may not use your County position to secure

special privileges or exemptions with respect to any County contract to which Timehri Networks is applying. See Section 2-11.1(g), Miami-Dade County Ethics Code.

Please submit this memorandum to the Procurement Department. The Ethics Commission does not submit it on your behalf.

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.