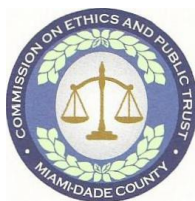


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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June 16, 2022

Maria V. Ayala
mvayala28@gmail.com

Re: INQ 2022-105, Section 2-11.1(q), Continuing application after municipal service.

Dear Ms. Ayala:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest arising from your current private employment due to your recent employment with the Town of Medley.

Facts

You are a former employee of the Town of Medley and you have inquired as to whether any conflict of interest may arise from your private employment as the owner and operator of Emjay Consulting, LLC.

You are currently self-employed as the owner and operator of a Florida limited liability company Emjay Consulting, LLC ("Emjay").¹ You have advised that you were previously employed as a full-time Code Compliance Officer for the Town of Medley from 2010 until December 2021. You advised that you retired from your municipal employment, and that you received your last paycheck around approximately January 6, 2022.

You advised that, while you were employed as a Code Compliance Officer with the Town of Medley, you specifically worked in the Code Compliance Department. Your responsibilities were primarily to patrol areas and conduct inspections of businesses, issue citations for any violations, encourage and review compliance before a violation hearing, and testify at violation hearings.

With regard to Emjay, you stated that your business primarily involves preparing applications for local business tax receipts and submitting those applications with the relevant municipal authority, be it the County or the Town of Medley. You advised that the Medley Building and Zoning

¹ You advised that you administratively dissolved Emjay in April 2022, but that you intend to re-establish and operate your business if there are no prohibitive conflicts of interest regarding your business model.

Department handles the local business tax receipts. Specifically, regarding the Town of Medley, you stated that you submit the applications for a business tax receipt on behalf of your clients, collect a receipt acknowledging that submission, and schedule inspectors. Additionally, you stated that you are sometimes present when the inspectors appear at your clients' business locations, but you stated that your presence is merely to ensure that there is someone at the location to let the inspector into the location. You advised that, while the Code Compliance Department performed these inspections while you were employed by the Town of Medley, it is your understanding that they are now performed by the Medley Business and Zoning Department. Finally, you advised that you have also run construction permits for your clients on an as-needed basis.

Neither you nor your business Emjay is, or plans to be, a vendor with the Town of Medley.

Issue

Whether there is any prohibited conflict of interest related to the operation of your business – Emjay – for customers in the Town of Medley.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) Section 2-11.1(q)(1) provides that:

No person who has served as . . . [a municipal]² employee shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any . . . application, RFP, RFQ, bid, request for ruling, or other determination, contract . . . or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect.

This is commonly referred to as the Two-Year Rule. *See* INQ 19-85; INQ 16-78. Under the Two-Year Rule, former municipal employees are prohibited from *lobbying* their former employer for two years after they cease municipal employment. *See* INQ 19-85. The lobbying activities prohibited by the Two-Year Rule are more expansive than those covered by the general lobbying subsection of the County Ethics Code. *See id.*

As such, **within the two-year period covered by the Two-Year Rule, former municipal employees are prohibited from arranging or participating in any meetings, negotiations, oral presentations, or other discussions directly with municipal officials or staff for the purpose of influencing the municipal elected official, staff, or employee to take any type of official action, decision, or recommendation.** *See* INQ 16-151 (citing RQO 04-33, RQO 02-139). “[A]ctivities that entail meetings with County staff to discuss . . . requested modifications to plans or permits *may* be considered lobbying, and therefore, deemed impermissible under the [T]wo-

² *See* County Ethics Code § 2-11.1(a) (stating that the County Ethics Code also applies to and sets a minimum standard of ethical conduct and behavior for employees of municipalities in the County).

[Y]ear [R]ule.” RQO 04-33 (emphasis added). However, interactions that are considered ministerial in nature are permissible and include: “filing/submitting permit applications, confirming receipt of permit applications, obtaining documents, asking a procedural question or requesting information about a permit.” INQ 19-85 (citing RQO 04-33). Furthermore, former public employees are permitted to share institutional knowledge regarding their former employer’s procedures with their new clients in their new private employment, and to provide guidance to those clients regarding interactions with their former public employer. *See* INQ 22-96 (citing INQ 21-02; INQ 20-63; INQ 19-75).

For example, a former employee of the City of Miami Beach who worked as a general contractor after leaving his municipal employment did not violate the Two-Year Rule when he submitted a permit application on behalf of a client to the Miami-Beach Building & Planning Department. *See* INQ 19-85. Likewise, a former employee of the Miami-Dade County Water and Sewer Department did not violate the Two-Year Rule by accepting employment to process permit applications on behalf of companies planning a construction project, so long as he did not meet with County staff to persuade them to expedite or approve the permits or discuss with County staff reviews or modifications related to the permits, as such discussions could be considered lobbying. *See* INQ 16-43. Furthermore, two former County employees whose County work involved either zoning analysis or coordinating engineering permits did not violate the Two-Year Rule by working as permit coordinators and/or permit runners after leaving their respective County positions so long as they did not attempt to persuade County staff to expedite review or approval of the permits or discuss with County staff modifications related to the permits. *See* INQ 16-46.

Here, your situation is analogous to the former municipal and County employees discussed above. As a result, the Two-Year Rule would not prohibit you from forming, or reestablishing, a corporation and working with prospective clients to gather documents, prepare, and submit applications for business tax receipts or construction related permits from the Town of Medley, your former employer, or from reaching out to Town of Medley staff to inquire as to the status of these applications, because all of these actions are ministerial in nature. *See* INQ 19-85; INQ 16-46; INQ 16-43. However, the Two-Year Rule would prohibit you from any attempt to persuade staff from the Town of Medley, whether orally or via written communication, to expedite review of or approve any applications/inspections submitted/requested on behalf of your clients. *See* INQ 16-46; INQ 16-43. The Two-Year Rule would also prohibit you from discussing with Town of Medley staff any review or modification related to the building permits you may seek on behalf of your prospective clients. *See* INQ 16-46; INQ 16-43.

With regard to any business transactions you may have with the County or any municipality *other than the Town of Medley*, the Two-Year Rule would not prohibit or limit such transactions because they are with government entities other than your former employer. *See* INQ 17-181 (citing RQO 14-02; RQO 12-09; INQ 15-202).

Opinion

Based on the facts presented here and discussed above, the Two-Year Rule does not prohibit you, either individually or through Emjay, from preparing and submitting applications for business tax receipts and/or construction related permits on behalf of your business clients to the Town of Medley. *See* INQ 19-85; INQ 16-46; INQ 16-43. **However, the Two-Year Rule would prohibit you from engaging in any meetings, negotiations, presentations, or other discussions with**

Town of Medley officials or staff regarding the applications you submit on behalf of your clients to encourage said staff to take any official action in relation to said applications. *See* INQ 16-151 (citing RQO 04-33, RQO 02-139). This prohibition includes any meetings, negotiations, presentations, or other discussions that are initiated or requested by Town of Medley officials or staff. *See id.* Any communications that you have with Town of Medley officials or staff regarding pending applications submitted on behalf of your clients must be limited to whether such applications were received, and whether they have been approved. *See* INQ 19-85 (citing RQO 04-33).

Additionally, it is advisable for you not to be present when a Town of Medley inspector appears to perform an inspection of your clients' business locations; however, if you are present, you may not engage in any discussion with the inspector regarding the inspection to encourage him to take any official action in relation to said inspection. *See* INQ 16-151.

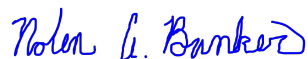
Furthermore, you should be aware of another provision of the County Ethics Code that impacts former employees and confidential information. Specifically, you are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your past employment with the Town of Medley to derive a personal benefit either to yourself or to Emjay and Emjay's clients. *See* County Ethics Code § 2-11.1(h); INQ 17-181.

Finally, we emphasize that the County Ethics Code represents a minimal standard of conduct for those who have served in government and remain subject to the Two-Year Rule. *See* INQ 17-181. Former employees should carefully consider the totality of the circumstances before taking action that could possibly erode the public's trust. *See* RQO 12-09; INQ 17-181 (citing INQ 13-197). If you are uncertain whether a specific activity constitutes lobbying, you should seek an opinion from this office prior to engaging in such activity.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from the Town of Medley or under state law. Questions regarding possible conflicts based on Town of Medley directives should be directed to the Town Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

Sincerely,



Nolen Andrew "Drew" Bunker, Esq.
Staff Attorney

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 Commission on Ethics 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.