



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Shiham Colegial Lorenzo
Construction Manager 2
Miami-Dade Public Library System

Lisa Thompson
Construction Manager 3
Miami-Dade Public Library System

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-114, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: July 13, 2022

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 Construction Manager 2 for the Miami-Dade Public Library System (Library). You would like to engage in outside employment as manager of your private company, Colegial Group, Inc.

As a Construction Manager 2 for Library, you assist consultants and County agency officials in the development of complex and difficult construction projects; issue work orders to consultants, surveyors and testing labs; review and verify consultant invoices and approve payment; review consultant plans and specifications at various stages of development for conformance to budget funding, program and design standards, completeness and accuracy; suggest changes, additions and corrections; monitors consultants cost estimates; schedule, attend, and writes reports of meetings with consultants and County agency representatives. You also coordinate the development of building construction projects with several agencies; coordinate bid advertisements, printing, and distribution of plans and specifications to bidders; monitor building constructions progress; inspect projects for substantial completion and prepare list of deficiencies; and maintain project administrative records and files.

Your private company, Colegial Group, Inc. (Colegial) will provide architectural drawings for interior renovations of private residential projects. You own the company and provide design services for private residential projects only. Your design services include design consultations and providing architectural drawings for small residential renovations. You do not provide services to the County or County vendors nor is Colegial seeking to become a County vendor. You advise that your work with Colegial 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 Construction Manager 2 for the Library and your prospective outside employment for your privately-owned company, Colegial Group, Inc.

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." Thus, County department directors have 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* County's Administrative Order 7-1 and RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

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.

In consideration of your inquiry, we must look to several factors, one of which is whether there is similarity in your duties as a Construction Manager 2 for Library and your prospective outside employment providing architectural drawings for interior renovations of private residential projects. In this instance, both positions require you to utilize a similar knowledge base involving construction/architectural design and planning; however, there is no indication that a prohibited conflict of interest exists. *See* INQ 21-54 and INQ 21-64.

The Ethics Commission has previously opined that a 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. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment particularly as you have indicated that you will not work for any County vendors; you will only work on residential projects; you will not use any equipment or resources which you use in your County

employment; and you will not work with the same people or similar entities that you currently work with in your County employment. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment for a privately owned company does not in and of itself create a conflict of interest. *See* INQ 20-43.

Moreover, the Ethics Commission has previously opined that a Construction Manager for Miami-Dade Parks, Recreation, and Open Spaces does not have a conflict of interest regarding his employment at the County and his outside employment as a freelance civil engineer because his outside employment would not impair his independence of judgment in the performance of his County duties as he will not transact business with the County or any County vendor; he will work exclusively on residential projects; and he will not use any County time or resources in his outside employment. *See* INQ 21-54. Additionally, a Contract Compliance Officer for the Internal Services Department does not have a conflict of interest regarding her employment at the County and her outside employment as the owner of a construction company because her outside employment would not impair her independence of judgment in the performance of her county duties as she will not transact business with the County or any County vendor; and she will not use any County time or resources in her outside employment. *See* INQ 21-22.

Nevertheless, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment in order 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 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 Colegial, or for the benefit of Colegial 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, Colegial, or Colegial clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent Colegial or Colegial 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 Colegial, it is important to note that you would be prohibited from doing any such activities on behalf of Colegial 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.