



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: Claudia Miro
Former Marketing Specialist
Miami-Dade Public Library System

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-115, Section 2-11.1(q), County Ethics Code, Two-Year Rule

DATE: June 18, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding limitations on employment by former County employees within two years of separation from Miami-Dade County.

Facts:

You were previously employed as a Marketing Specialist for the Miami-Dade Public Library System (Library). Your duties included creating and editing a weekly newsletter for the Library. You separated from the Library on May 16, 2022.

You are currently employed with a private sector company that provides transportation services. You do not have an ownership interest in the company. Your company wishes to meet with Seaport personnel to pitch transportation services in hopes of securing Seaport business. There is no pending RFP or RFQ. The meeting is described as a “meet and greet” or first pitch discussion of ideas for possible future proposals, prior to submission of any such proposal to the County, and prior to any County solicitation or bid.¹ You further advised that you regularly attend such meetings with other organizations but rarely speak during the meeting.

¹ At the moment, there are no foreseeable procurement actions from Seaport involving transportation services. However, upon inquiry with Seaport personnel regarding a potential meeting as described by Ms. Miro, personnel was of the opinion that such activity would amount to lobbying.

Analysis and Opinion:

Section 2-11.1(q) of the Miami-Dade County Ethics Code (Ethics Code) or the “Two-Year Rule”, prohibits former County employees from “lobbying” the County for a period of two years following separation.

Specifically, this section prohibits a County employee, for a period of two years after his or her County service has ceased, from:

...lobby[ing] any county officer, department personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid request for ruling, or other determination, contract, claim, controversy, charge accusation, arrest or other particular subject matter in which Miami-Dade County or one of its agencies or instrumentalities is a part or has any interest whatever, direct or indirect.

The post-employment lobbying activity prohibitions contained in Section 2-11.1 (q) of the Ethics Code are more expansive than those found under the general lobbying ordinance.² See INQ 21-05, INQ 21-123, and INQ 22-61. The Two-Year Rule includes advocating for actions or decisions that may be made at the sole discretion of *any* County personnel. See RQO 12-09; RQO 13-07.

Accordingly, former County employees may not attempt to persuade County staff, whether in person or by written communication, to take a particular course of action. These actions are

² Section 2-11.1(s)(1) of the Ethics Code – the general lobbying ordinance – defines the term lobbying activity as the following:

Lobbying activity means any attempt to influence or encourage the passage or defeat of, or modification to, governmental actions, including, but not limited to, ordinances, resolutions, rules, regulations, executive orders, and procurement actions or decisions of the County Commission, the Mayor, any County board or committee, or any County personnel. The term "lobbying activity" encompasses all forms of communication, whether oral, written, or electronic, during the entire decision-making process on actions, decisions, or recommendations which foreseeably will be heard or reviewed by County personnel. This definition shall be subject to the exceptions stated in subparagraph (s)(2) below.

However, the definition of post-employment lobbying activities under Section 2-11.1(q) of the Ethics Code is more expansive as it includes advocating for actions or decisions that may be made at the sole discretion of any County departmental personnel or employee. See RQO 12-09 and 13-07.

And, while meet and greet preliminary meetings with municipal/County officials (when nothing is pending before the municipality; no proposal has been formalized, written, or submitted; and there has been no decision as to whether a decision will be made) fall outside the definition of lobbying activity under Subsection (s) of the Ethics Code, it is not applicable Section 2-11.1(q) of the Ethics Code because of the broader scope of activities included under post-employment lobbying per subsection (q). See INQ 15-47, INQ 15-194, *see also* RQO 12-09.

Therefore, under Section 2-11.1(s) of the Ethics Code, an individual would not have to register as a lobbyist to attend such a meeting, but if that same individual is a former County/municipal employee within two years of his/her separation from the government entity, then he or she may be in violation of Subsection (q) of the Ethics Code for attending the meet and greet preliminary meeting if it is determined that the meeting is intended to influence County/municipal personnel/officials. See RQO 12-09.

considered lobbying and are prohibited. *See* RQO 02-139 and INQ 21-05. Moreover, former County employees are prohibited from engaging in contact with the County that would result in influencing the County's decision-making on behalf of the former employee's current employer. Notably, the Commission on Ethics has advised former County employees to remove themselves from discussions, meetings, where their presence would give the current employer an advantage. *See* INQ 16-128.

Former County employees are however allowed under Subsection (q) to share institutional knowledge regarding their former employer's procedures with their new clients, and to provide guidance to their clients or employers regarding interactions with the County. *See* INQ 19-75, INQ 20-63 and INQ 21-02. Direct meetings and contacts between the former employee and County personnel are also permissible *as long as there is no advocacy* involved in the interactions and the employee or other attendees are not seeking to influence County personnel. *See* INQ 20-63 and INQ 21-123.

Additionally, a former County employee may engage in interactions with County staff which are ministerial in nature, such as filing/submitting permit applications, confirming receipt of permit applications, obtaining documents, asking a procedural question, or requesting information about a permit. *See* INQ 16-46 citing RQO 04-33. However, **any attempt to persuade County staff, whether in person or by written communication, to take a particular course of action or to make a determination, is considered lobbying.** *See id* citing RQO 02-139.

In RQO 12-09, the Miami-Dade Commission on Ethics further explained the parameters of the prohibition with respect to allowable meetings with County staff as follows:

These meetings must be held for informational purposes only and not for the purpose of influencing any recommendations or other actions on the project. You are prohibited from arranging and/or *participating in meetings* with City [County] officers and staff... if the meetings are convened for the purpose of influencing elected officers and/or City [County] employees to take an official action or make an official decision. (Emphasis added.)

Former employees are also prohibited from making presentations before County selection committees, boards and agencies, the Board of County Commissioners and its committees and subcommittees. This prohibition is broad and covers any activity where you would be publicly identified as part of a lobbying team. *See* INQ 21-02 and INQ 21-123; *see also* RQO 04-34 (citing RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team).

Lastly, it is worth noting that former employees are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his former County position to derive a personal benefit either to himself or his client. *See* County Ethics Code § 2-11.1(h); INQ 17-181 and INQ 16-46.

Consequently, as your meeting is intended to pitch transportation services in hopes of securing Seaport business including discussion of ideas for possible future proposals, it would fall outside the description of a purely informational meeting. The meeting is convened for the purpose of influencing County employees to take an official action or make an official procurement decision i.e. conduct business with your company. Former employees are cautioned against engaging in any action that might be perceived as advocating or seeking to influence County elected officials or personnel as this this would be a violation of the County's Two-Year rule.

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.