



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: Kenneth D. Hutchins, M.D.
Chief Medical Examiner
Miami-Dade County Medical Examiner

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-134, Section 2-11.1(e), Gifts

DATE: September 2, 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 concerning a potential gift to the Miami-Dade County Medical Examiner.

Facts

You are the Chief Medical Examiner of the office of the Miami-Dade County Medical Examiner (“ME”). The ME provides “accurate, timely, dignified, compassionate and professional death investigative services for the residents of Miami-Dade County.”¹ The ME’s Investigations Bureau assists and coordinates investigative efforts in identifying unknown human remains.² You have advised that the ME is considering collaborating with a private company – DNASolves – to help identify the remains of a decedent from 1988, at no cost to the County.

¹ *Medical Examiner*, MIAMI-DADE COUNTY, <https://www.miamidade.gov/global/medicalexaminer/home.page> (last visited Aug. 30, 2022).

² *Investigations Bureau*, MIAMI-DADE COUNTY, <https://www.miamidade.gov/global/medicalexaminer/investigations-bureau.page> (last visited Aug. 30, 2022).

Othram Inc., a Delaware corporation, is doing business as DNASolves.³ DNASolves advertises itself as a company that “combines crowdfunding,⁴ volunteered data, and cutting-edge genomics to solve ‘unsolvable’ cases.”⁵ You advised that you have been in contact with DNASolves, and they advised you that, upon request of their services with regard to a specific case, they will devote a webpage on their website to that case to solicit financial contributions, which will in turn be used to fund analysis of the unidentified person’s genetic material with the aim of identifying said person. Specifically, they advised you that the crowdfunding process will work as follows: 1) the ME submits the case details to DNASolves; 2) DNASolves reviews and accepts the matter; 3) the ME submits the genetic material to be tested to DNASolves; 4) DNASolves creates a narrative of the case; 5) the ME reviews the narrative and edits or approves it; 6) DNASolves posts the narrative and a link to donate on its webpage and advertises the matter through social media platforms and press releases; 7) the ME issues a press release that it is working with DNASolves to bolster the funding request; and, 8) when the funding goal is reached, the donation link is removed and genetic testing commences.

You further advised that, to your knowledge, DNASolves is not a County vendor.

Issue

Whether the County may accept, at no cost to the County, the offer of a private company to crowdfund and perform genetic testing to identify the unidentified remains of an individual that were recovered in Miami-Dade County.

Analysis

Section 2-11.1(e) of the County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) limits the solicitation and receipt of gifts by County employees. *See* County Ethics Code § 2-11.1(e)(3). The term “gift” is defined as, “the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.” County Ethics Code § 2-11.1(e)(1). County officers and employees are prohibited from soliciting or demanding a gift, nor may a County officer or employee accept or agree to accept any gift because of “[a]n official public action taken, or to be taken, or which could be taken; [a] legal duty performed or to be performed, or which could be performed; or [a] legal duty violated or to be violated” County Ethics Code § 2-11.1(e)(3). However, County employees can solicit and accept donations “on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business,” and those donations are not considered “gifts” under the County Ethics Code.

³ *Terms of Use*, DNASOLVES.COM, <https://dnasolves.com/terms> (last visited Aug. 30, 2022).

⁴ The term “crowdfunding” is defined as “the practice of obtaining needed funding (as for a new business) by soliciting contributions from a large number of people especially from the online community.” *Crowdfunding*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/crowdfunding> (last visited Aug. 30, 2022).

⁵ *Frequently Asked Questions*, DNASOLVES.COM, <https://dnasolves.com/faq> (last visited Aug. 30, 2022).

See County Ethics Code § 2-11.1(e)(2)(e); RQO 02-70 (“Although the donations [to the City of West Miami] are in the form of money and are received without consideration, they are not gifts under the ordinance since the money is used for city purposes and is allocated for specific city projects.”).

As such, donations to the County or one of its subordinate entities for a public purpose is not prohibited or reportable as a “gift” under the County Ethics Code so long as no *quid pro quo* activity takes place or is anticipated to take place as a result of the donation. See RQO 05-119; INQ 20-113; INQ 18-124. *Quid pro quo* activity has been construed to mean official action of a County official or employee. See INQ 20-113; INQ 18-124; see also County Ethics Code § 2-11.1(e)(3).

For example, in the past Microsoft provided, at no cost to the County, technical support valued at \$10,000.00 for Microsoft products used by the Miami-Dade County Information Technology Department (“ITD”), and this did not give rise to a conflict of interest because the free technical support was used by County employees solely in the performance of their official duties in furtherance of official County business. See INQ 13-39. Additionally, because the free services were rendered to the County and used by County employees in the performance of their official duties to further official County business, none of the County employees who used the free services were required to file a gift disclosure statement in connection with utilizing the free technical support. See *id.*

Additionally, the ME could accept a donation of two body lifts from Florida Cremation Services (“FCS”), a private entity, without giving rise to a prohibited conflict of interest because the lifts would be used by ME employees in the performance of their County duties in furtherance of official County business, and so long as FCS made the donation without any expectation of any favorable action in return for the donation (i.e., no *quid pro quo*). See INQ 13-114; see also INQ 18-31 (the ME could accept the donation of a pedestal, palm trees, and catering to honor the late director of the ME on the occasion of renaming a County cemetery in his honor because the donated items and services were provided to the County for the sole use and benefit of the County).

The County and its officers and employees specifically designated by ordinance may solicit donations or charitable contributions from private individuals and businesses to further official County business, but only so long as the solicitation is broad based. See County Ethics Code § 2-11.1(e)(2)e; INQ 20-131. “The Ethics Commission has cautioned against direct solicitation of current or future County vendors and contractors, while recognizing that these parties can be part of a larger solicitation that includes members of the general community.” *Id.* (citing RQO 06-05).

Here, DNASolves is offering to work with your office, at no cost to the County, to solicit funding for, and then perform, genetic testing to identify unidentified human remains recovered in Miami-Dade County. This would further one of the official duties of the ME’s – specifically, the identification of unknown human remains. See RQO 02-70; INQ 13-114. Additionally, there does not appear to be any *quid pro quo* activity anticipated by the transaction with DNASolves; rather, DNASolves anticipates getting the funding for the genetic testing through crowdfunding and it does not otherwise expect any business with the ME as a result of the collaboration. See RQO 05-119; INQ 20-113. Furthermore, the solicitation of donations by DNASolves appears to

be broad based and geared toward members of the general community, not toward current or future County vendors, and as such would not give rise to an appearance of impropriety. *See* INQ 20-131.

Accordingly, the provision of fundraising and genetic testing services, at no cost to the County, by DNASolves would not be considered a gift under the County Ethics Code because it is the provision of a free service to the County to be used in the County's official business in furtherance of that business without any expectation of favorable action by the ME in return. *See* RQO 02-70; INQ 13-114.

Opinion

Based on the facts presented here and discussed above, the ME's proposed collaboration with DNASolves, at no cost to the County, to raise funds for and perform genetic testing of the unidentified remains of an individual recovered in Miami-Dade County does not violate the County Ethics Code because the services received will be in furtherance of the ME's official business, and because there is no *quid pro quo* activity taking place or anticipated by the provision of the fundraising and genetic testing services. *See* RQO 02-70; INQ 13-114. Further, because the no-cost provision of the fundraising and genetic testing by DNASolves is not a "gift" as defined by the County Ethics Code, no disclosure is required under the County Ethics Code. *See* County Ethics Code §§ 2-11.1(e)(2)(e), (e)(4); INQ 20-113.

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.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

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.