



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vivian Guzman
Senior Chief, General Maintenance Division
Miami-Dade County Water and Sewer Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-139, Section 2-11.1(g), Exploitation of official position prohibited.

DATE: September 26, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding a possible conflict of interest based on the employment by your Department of two members of the same family.

Facts

Miami-Dade County Water and Sewer Department (“WASD”) provides water and wastewater services to individual retail customers and municipal utilities, with services including water supply, transmission, treatment, distribution, conservation, wastewater collection, treatment, disposal, and water reclamation.¹ You advised that WASD has multiple divisions, one of which is the General Maintenance Division. You oversee the General Maintenance Division, which is responsible for departmental operations and operational support. The General Maintenance Division is organized with one Chief of the Division – you – and three subordinate section-heads, one of whom is Mr. Eddy Machado. Mr. Machado is employed by WASD as a Water/Wastewater Operations Manager, and his job responsibilities primarily include overseeing the Structural Maintenance Division, the Plumbing Division, and the Plant Electricians.

¹ *Water and Sewer – About Us*, MIAMIDADE.GOV, <https://www.miamidade.gov/global/water/home.page> (last visited Sept. 23, 2022).

The Structural Maintenance Division is, itself, divided into the North Unit and South Unit, with each unit having its own supervisor who reports to Mr. Machado. The South Unit Supervisor is Structural Maintenance Supervisor Daniel Guerra. Both the North and South Units are made up of Structural Maintenance Workers whose primary job responsibilities include painting walls, stripping and polishing floors, hanging and installing equipment, and locksmithing. One of the Structural Maintenance Workers working in the South Unit is Alejandro Benedico Machado.

You advised that it has come to your attention that Mr. Machado is the uncle of Mr. Benedico Machado. You further advised that Mr. Benedico Machado's direct supervisor, South Unit Structural Maintenance Supervisor Mr. Guerra, is responsible for conducting and completing Mr. Benedico Machado's annual performance reviews. However, Mr. Machado, as part of his responsibilities as WASD Water/Wastewater Operations Manager, is responsible for reviewing and approving those evaluations. Finally, you noted that Mr. Machado only directly interacts with and supervises his subordinate supervisors and that he would not have occasion to interact with or direct Mr. Benedico Machado.

Issue

Whether there is a prohibited conflict of interest that would prevent a WASD Water/Wastewater Operations Manager from being in the chain of approval for the job performance reviews of his nephew.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") does not explicitly address nepotism. *See* RQO 01-78; INQ 22-89; INQ 22-03.

However, Section 2-11.1(g) of the County Ethics Code provides that no County employee "shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others," unless expressly permitted by ordinance. This section has been interpreted to mean that County employees must avoid any action hiring, promoting, or advocating for the advancement of an immediate family member. *See* INQ 22-89 (citing RQO 99-24); INQ 17-233. In practice, it has been opined that there was no prohibited conflict of interest when WASD filled an open Engineer 2 position with the spouse of a WASD employee currently employed as an Engineer 2, but only so long as the current WASD employee had no input in the interview and evaluation process leading to the hiring of the WASD employee's spouse, and so long as the current WASD employee would not work with his spouse on any assignments or have input in her performance evaluations once WASD hired her. *See* INQ 18-174. In contrast, it has been opined that there was no prohibited conflict of interest when the Village Manager of North Bay Village sought to hire a distant relation as Assistant Village Manager so long as the hiring was based on objective factors and not the familial connection. *See* INQ 18-148 (stating that Section 2-11.1(g) could apply to a situation where a County employee provided a special hiring privilege to someone with whom they had a special relationship); *see also* RQO 01-78 (no prohibited conflict of interest prevented a Miami-Dade County Commissioner from hiring her cousin's husband as her Chief of Staff).

Nevertheless, “close attention must be given to situations which may create an appearance of impropriety affecting the public trust in government.” INQ 22-03. It has been opined that close family members should not work on the same project or be called to “directly or indirectly evaluate or supervise the other’s work,” because even the suggestion that a close family member could have exercised authority to afford special treatment or attention to another family member who is also a County employee could create an appearance of impropriety that should be avoided. INQ 22-89 (finding no prohibited conflict of interest under Section 2-11.1(g) when two spouses simultaneously serve as WASD Deputy Directors so long as they do not work on any shared projects or supervise one another); *see also* INQ 22-03.

Here, because Mr. Benedico Machado is not a member of Mr. Machado’s immediate family,² and because Mr. Machado does not have any direct supervision over or directly review Mr. Benedico Machado’s work, there does not appear to be an explicitly prohibited conflict of interest under Section 2-11.1(g) of the County Ethics Code. *See* RQO 01-78; INQ 18-148. However, because Mr. Machado is in the supervisory chain of Mr. Benedico Machado and does have a role in approving the annual review of his nephew, the situation could give rise to an appearance of impropriety that would prompt a strong recommendation that Mr. Machado recuse himself from any involvement in all matters involving personnel actions or decisions affecting his nephew and that Mr. Machado delegate the matter to another supervisor of equal rank. *See* RQO 99-24 (no prohibited conflict of interest found where the Miami-Dade County General Services Administration (“GSA”) sought to hire the nephew of a current GSA employee so long as “the family members are not in a superior-subordinate relationship”); INQ 22-03 (suggesting that, to resolve an appearance of impropriety, the Interim Assistant Director of the Miami-Dade County Department of Regulatory and Economic Resources (“RER”) recuse himself from any involvement in personnel matters relating to his sister-in-law who also worked for RER).

Furthermore, while the Ethics Commission only has jurisdiction to interpret and opine on the County Ethics Code (and other ordinances not pertinent to this inquiry), Florida law and County policy cannot be ignored.

Florida law provides that:

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.

Fla. Stat. § 112.3135(2)(a). A “public official” includes any County officer or employee who has the authority “to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with [County]

² Immediate family is defined by the County Ethics Code as “the spouse, domestic partner, parents, stepparents, siblings, half-siblings, step-siblings, children, and stepchildren of the person involved.” Miami-Dade County Code § 2-11.1(b)(9).

employment.” Fla. Stat. § 112.3135(1)(a), (c). A “relative” includes an uncle or a nephew. Fla. Stat. § 112.3135(1)(d).

Miami-Dade County policy mirrors Florida law and explicitly states that relatives of, “Assistant Directors, Division Directors, and all Managers who, by department policy or practice, are delegated the authority to make employment or promotion decisions,” may not be appointed, employed, or promoted within said Department. *See* County Manager’s Memorandum dated June 11, 2007, available at: <https://www.miamidade.gov/humanresources/library/labor-relations-nepotism-manual.pdf> (last visited Sept. 22, 2022). County policy further elaborates that, “[o]fficials with the authority to appoint or promote or who are in a position to recommend appointment or promotion **cannot avoid the statute’s prohibitions by temporarily delegating their authority to others in particular cases.**” *See id.* (emphasis added).

Accordingly, in light of Florida law and County policy, and the facts as you have presented them, it does appear that Mr. Machado merely recusing himself from any involvement in all matters involving personnel actions or decisions affecting his nephew, Mr. Benedico Machado, and delegating the matter to another supervisor of equal rank would not be sufficient and it is strongly recommended that you review this matter with either the Miami-Dade County Human Resources Department or the Miami-Dade County Attorney’s Office. *See* INQ 22-03.

Opinion

Based on the facts presented here and discussed above, Mr. Machado would not have an explicitly prohibited conflict of interest in serving as a WASD Water/Wastewater Operations Manager, with his nephew, Mr. Benedico Machado, working as a Structural Maintenance Worker – a subordinate under Mr. Machado’s ultimate supervision – because there is no indication that Mr. Machado has used his position to garner Mr. Benedico Machado any special benefit or favor. *See* RQO 01-78; INQ 18-148. However, because of the potential for an appearance of impropriety, it is strongly recommended that Mr. Machado recuse himself from any involvement in all matters involving personnel actions or decisions affecting his nephew. *See* INQ 22-03.

Additionally, it is further **strongly recommended that you review this matter with either the Miami-Dade County Human Resources Department or the Miami-Dade County Attorney’s Office** to determine whether WASD must transfer Mr. Benedico Machado away from the supervisory chain of Mr. Machado, his uncle, in light of State law and County policy.

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.

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.