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GENERAL COUNSEL
Radia Turay
ADVOCATE

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Via email only to expedite delivery:

eavila@cityofhomestead.com

RMeyers@wsh-law.com

Honorable Erica G. Ávila
Councilmember
City of Homestead City Hall
100 Civic Court
Homestead, Florida 33030

Robert Meyers, Esq.
Weiss Serota Helfman
2255 Glades Road, Suite 200E
Boca Raton, Florida 33431

Re: INQ 2022-145, Outside Employment, Councilmember Avila, Homestead, Sec. 2-11-1(j),
County Ethics Code

Dear Councilmember Ávila:

Robert Meyers advises that you are seeking general guidance regarding the application of the County Ethics Code’s provisions to your outside employment as the principal in a construction management firm and as an employee of residential loan origination firm. In both outside employment capacities, it is contemplated that you may interact with City of Homestead (“City”) and Homestead Community Redevelopment Agency (“CRA”) staff.

This opinion provides some broad cautionary guidance and identifies some scenarios where it would be best for you to request a more a specifically tailored ethics opinion.

Background:

You are an elected member of the Homestead Council and also sit as member of the Homestead CRA. In the City of Homestead, the elected members of the city council also serve as members of the CRA board.

In your private capacity, you are the principal and owner of Avila Management Team, Inc., a fee-based project management services business that has been in operation since 2017. The bulk of your work in the property management field entails coordinating with property owners, contractors, and subcontractors to resolve payment issues and disputes. A small percentage of your project management consulting work involves interfacing with governmental agencies, including the City, when a municipal employee has questions related to one of your client's projects. Examples of the activities that you may engage in, include:

- Encouraging staff to expedite an application and plans for a permit.
- Calling for inspections/conferring with staff on whether a permit, plan review or inspection is required.
- Working with staff to reinstate an expired permit or process number.
- Working with staff on plan modification to expedite approval.

Also, you are employed as a Senior Mortgage Loan Originator with All in One Mortgage Lenders and you assist clients with purchase money mortgages. As part of your work in the loan origination field, you may advise your clients of the CRA's down payment assistance programs and may additionally interact with CRA staff on behalf of clients as part of their application process.

Discussion:

As a preliminary matter, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) applies to elected councilmembers in the City of Homestead. (Sec. 2-11.1(a), Miami- Dade Code) Likewise, when sitting as members of the CRA board, the councilmembers/CRA board members are subject to the County Ethics Code. ¹

Several provisions of the County Ethics Code will apply to those outside employment activities that will require you to interact with City and CRA staff or otherwise engage in official actions that may affect your firm, employer, or clients.

a. Conflicting Employment

There is no *per se* bar on an elected official or board member working within her city and the Ethics Code only prohibits an official or member from engaging in employment that might impair his or her independence of judgment in the performance of public duties. ²

¹ See Sections 2-66, 2-70, Homestead Code.

² Section 2-11.1(j), County Ethics Code.

From the description you have provided, it does not appear that your work as construction project manager or mortgage originator in Homestead would impair your independence of judgment in the performance of your public duties as a council member or CRA board member.

However, if you find that requirements of either outside employment engagement are giving rise to recurring conflict of interest scenarios, either in interaction with City or CRA staff, or in the consideration and vote on council or CRA agenda items, then you are encouraged to seek further guidance. Outside employment that will create a continuing or frequently recurring conflict between public and private duties or interests may constitute prohibited conflicting outside employment.³

b. Prohibited Board Appearances and Payments

You are not permitted to appear before the Homestead Council or CRA board, either directly or through an associate, and make a presentation on behalf of the construction management or mortgage companies or a company client. Moreover, you are not allowed to receive compensation from a person seeking a benefit from the City or CRA in relation to the benefit sought.⁴

This also means you must not lobby or try to influence City or CRA staff for the benefit of the companies or clients. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. Consequently, while you are allowed to collect documents for your clients and forward them to City or CRA staff, you are cautioned not to proceed beyond these types of ministerial exchanges. You should certainly avoid advocating any type of action by a City or CRA staff member.⁵

³ See also Sec. 112.313 (7)(a), Florida Statutes (No public employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an employee. Nor shall an employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.)

⁴ Section 2-11.1(m)(2), County Ethics Code (Prohibiting a council member from appearing before any municipal board on behalf of third party and from receiving compensation, directly or indirectly or in any form, for any services rendered to the third party seeking a benefit from the municipality.) See generally RQO 07-02; RQO 07-39; INQ 15-229; INQ 17-254; INQ 19-12.

⁵ See INQ 09-33 (County executive serving on the board of a non-profit agency receiving county funding may not sign any documents or grant applications presented to the County and if any issues arise relating to grant applications, the employee may not participate in meetings or discussions with County staff regarding the dispute); INQ 11-178.

c. Exploitation of Official Position & Official Actions

As a councilmember or CRA board member, you may not use your official positions to secure special benefits, privileges or exemptions for yourself or others. You should be cautious, if you are interacting with City staff, even as part of a purely ministerial transaction related to your outside employment duties, to not represent yourself as a councilmember or board member. Of course, you are not permitted to use City or CRA staff or resources to support your outside employment. You should refrain from giving City or CRA employees any direct or indirect instruction to engage on any matters in which you or your companies are involved. Finally, you cannot use your public positions to promote the use of your company's services.⁶

d. Voting Conflicts

Because you are a covered party under the Ethics Code, then Section 2-11.1(d) of the Code would likewise apply to you. The second part of Section 2-11.1 (d) of the Ethics Code provides that an elected official shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Commission] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (Emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official "would or might, directly or indirectly, profit or be enhanced by the action..." as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure "which would inure to his or her special private gain or loss."

Consequently, if there is any matter that comes before the council that may affect your employer loan originating company, your construction project management company, or entity's clients, then you may have a voting conflict that will require your recusal. Because of your employment and ownership relationship with the entities, respectively, then you would or might, directly or indirectly, profit or be enhanced by the action, then you would have a prohibited voting conflict. As a general rule, you should abstain from the vote or request ethics guidance before the matter is considered.

⁶ Sections 2-11.1(g) and (n), County Ethics Code; INQ 21-121.

Section 2-11.1(v) of the County Ethics Code defines voting conflicts of interest for members of quasi-judicial boards. The section provides that an advisory quasi-judicial board member shall not vote on any matter: “if the board member will be directly affected by the action of the board” and the board member has any of the following relationships with any persons or entities appearing before the board: “officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary; or stockholder, bondholder, debtor or creditor.”⁷

The restrictions on your consideration and vote on matters in your capacity as a CRA board member are less onerous than those that apply to you as a councilmember. Nevertheless, it is advisable that should any matter come before the CRA board that may affect your employer loan originating company, your construction project management company, or entity’s clients, that you request ethics guidance before the matter is considered.

e. Appearance of Impropriety

Finally, as regards recent construction clients on completed projects, you may wish to pause and seek ethics guidance regarding your actions as a councilmember. The Ethics Commission has previously considered somewhat related scenarios involving local elected officials that had prior business relationships with developers and other business clients that were going to be affected by votes of a city commission.

While opining that the elected officials did not have *per se* voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code prohibiting their consideration and vote on matters that would affect the developers, the Ethics Commission advised caution.⁸

More specifically the Commission noted as follows:

The County’s Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address “appearance of impropriety” issues that should guide the actions of all public servants, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business.

Moreover, while the Ethics Commission does not have the authority to interpret or enforce state statutes, we are cognizant of Section 286.012, Florida Statutes, relating to voting requirements at meetings of governmental bodies. While that section provides that a member may not abstain from voting unless there is, or appears to be, a possible conflict of interest under the state ethics code, it does also provide as follows regarding quasi-judicial matters:

⁷ INQ 17-69 (The COE has generally applied Section 2-11.1(v) to autonomous boards.)

⁸ See INQ 2021-69; INQ 13-148; and RQO 12-03.

If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

Conclusion:

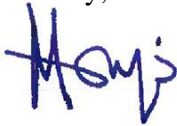
The Ethics Code does not prohibit your service as a member of the Homestead Council or the Homestead CRA while simultaneously being employed as the principal in a construction management company or employee in a loan origination company.

However, there are several provisions of the Ethics Code that would limit or otherwise prohibit your official actions, including voting as a member of the council and CRA board, on matters that would or might directly or indirectly affect you, your business, your employer, or your clients. Also, your communications or interactions with municipal or CRA staff are similarly limited by the Ethics Code.

This opinion is limited to the facts as you presented them to the Commission on Ethics, is limited to an interpretation of the County Ethics Code and is not intended to interpret state laws. Questions regarding state ethics laws, including those cited in footnotes in this opinion, should be addressed to the Florida Commission on Ethics.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,



Jose J. Arrojo
Executive Director

cc: All Commission on Ethics Attorneys

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.