



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Dennis Medina
Police Officer
Miami-Dade County Police Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-148, Section 2-11.1(c), Limitations on Contracting with the County;
Section 2-11.1(e), Gifts; Section 2-11.1(j), Conflicting employment prohibited.

DATE: October 26, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Commission on Ethics”) and requesting our guidance regarding possible conflicts of interest arising from the operation of your private business and your County employment.

Facts

You are employed by the Miami-Dade County Police Department (“MDPD”) as a Police Officer. Specifically, you advised that you work as part of the MDPD Special Response Team (“SRT”). The SRT is responsible for, among other things, executing high-risk search and arrest warrants, handling armed and barricaded subject incidents, and hostage rescue situations.

You advised that, as a result of your professional experience, you have designed, developed, and invented a forcible entry breaching ballistic shield. You registered your invention with the United States Patent and Trademark Office, and they granted you patent number 11236972. You advised that you invented the forcible entry breaching ballistic shield to serve as a tool that provides protection from ballistics while simultaneously being used to make a forced entry.

You further advised that you established Armored Breach LLC, a Florida limited liability company, to market and sell the forcible entry breaching ballistic shield. You are the owner and President of Armored Breach LLC. You advised that Armored Breach LLC does not currently have a County contract, nor has it responded to any solicitation, request, or invitation to quote. You further advised that you are currently the only person actively using the device. However, you

stated that you are interested in giving sample products to local municipal police departments, as well as ultimately marketing and selling the forcible entry breaching ballistic shield to the same.

Issue

Whether there is any prohibited conflict of interest related to your employment as a Police Officer with MDPD and you and/or Armored Breach LLC donating and/or marketing and selling the forcible entry breaching ballistic shield to local County and/or municipal entities.

Analysis

This inquiry involves several sections of the County Ethics Code, each of which is analyzed below:

A. Contracting with the County

The Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) Sections 2-11.1(c)(1) and (d) prohibit County employees from contracting or transacting business with the County, individually or through a business in which they have a controlling financial interest. “Transacting business” with the County is defined as the purchase or sale of goods or services for consideration. *See* County Ethics Code § 2-11.1(b)(10). However, a limited exclusion exists from the broad prohibition against contracting with the County if:

- (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County,
- (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and
- (3) the employee’s job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance.

County Ethics Code § 2-11.1(c)(2). Nevertheless, a Miami-Dade County employee and his or her immediate family members may not contract with the County department for which he or she works. *See id.*

In practice, this has meant that a company owned and operated by the stepparent of an MDPD employee could not contract to provide polygraph services to MDPD because she was an immediate family member of an employee of the contracting County department. *See* RQO 11-29; INQ 11-167. However, a County employee who designed and patented a device to extend the life of high-pressure hoses used to clean sewer pipes could contract with a County vendor to market his device. *See* RQO 00-32. Furthermore, a firefighter employed with Miami-Dade County Fire Rescue (“MDFR”) who owned and operated a company that provided custom school, business, and sports-related uniforms and company branding services could contract with the County through his business, but only so long as neither he nor his company contracted with MDFR, his employing department. *See* INQ 21-21. Similarly, a Systems Analyst/Programmer 1 employed with the Miami-Dade County Information Technology Department (“ITD”), and assigned as

digital security liaison between ITD and the Miami-Dade County Corrections and Rehabilitation Department (“MDCR”), could contract with the County through her privately-owned limited liability company that provided child/elderly transportation services through a digital application, but only so long as neither she nor her company contracted with ITD or MDCR. *See* INQ 21-04.

Here, you and/or your company Armored Breach LLC, may not contract with MDPD because that is the County department that employs you. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 00-32. However, you and/or Armored Breach LLC, may contract with any other County department that does not employ you or that your duties do not concern. *See* INQ 21-21; INQ 21-04. Furthermore, you are free to market and sell your invention to any other municipal law enforcement entity that operates in Miami-Dade County because those other entities do not employ you. *See* County Ethics Code § 2-11.1(b)(6), (c)(1), (c)(2).¹

B. Outside Employment

The County Ethics Code prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” County Ethics Code § 2-11.1(j). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder 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.” Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his or her County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* INQ 21-27; INQ 20-21.

Work you conduct for Armored Breach LLC constitutes outside employment, as defined by the County Ethics Code. *See* RQO 17-03. Based on the information you have provided to us at this time, it appears to be unlikely that the type of outside employment that you engage in through Armored Breach LLC would impair your independence of judgment in the performance of your County duties as a Police Officer with MDPD. *See* RQO 17-01; RQO 16-02; INQ 21-27; INQ 20-21.

However, County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside

¹ That being said, the County Ethics Code provides for the possibility of a waiver of the prohibition on contracting with an employee’s employing County department with regard to a specific proposed transaction. If you seek such a waiver, you must first request a formal opinion on the specific proposed transaction from the Commission on Ethics. Whereupon, if the Commission on Ethics finds that the requirements of the County Ethics Code Section 2-11.1(c) are not met, then you may file an appeal with the Miami-Dade County Board of County Commissioners (“BCC”) requesting a waiver of County Ethics Code § 2-11.1(c) for that specific proposed transaction. The BCC may, upon an affirmative vote of two-thirds of the entire BCC after a public hearing, grant a waiver for the specific proposed transaction. *See* County Ethics Code § 2-11.1(c)(4), (6); RQO 11-29. Such a waiver may only be granted if the BCC finds that “the requirements of this ordinance pertaining to the exclusion for a County employee from the Code have been met and that the proposed transaction will be in the best interest of the County.” County Ethics Code § 2-11.1(c)(4); *see also* RQO 11-29.

employment would be contrary, detrimental, or adverse to the interests of the County or the employee's department. *See* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. Accordingly, this memorandum does not grant you permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director.

Additionally, given that you are a full-time employee, you must also file with the County Election's Department an outside employment financial disclosure form – Outside Employment Statement – on July 1st of each year for income from outside employment earned during the preceding year, including income earned through Armored Breach LLC. *See* County Ethics Code § 2-11.1(k)(2). The form is available online at <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

C. Certain Appearances and Payment Prohibited

You may not lobby the County. In this case, it does not appear that you have lobbied the County regarding Armored Breach LLC generally or regarding the forcible entry breaching ballistic shield you invented in particular. However, we caution that, in future, you may not contact anyone within the County, or MDPD in particular, in an attempt to influence a decision about any County action related to you and/or Armored Breach LLC, including the use or purchase of your invention. *See* County Ethics Code § 2-11.1(m)(1); INQ 21-21; INQ 17-111.

D. Exploitation of Official Position

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. County Ethics Code § 2-11.1(g). Accordingly, you may not exploit your County position to secure special privileges or exemptions for yourself and/or Armored Breach LLC. This includes soliciting business for Armored Breach LLC while on duty with MDPD, either by handing out business cards or informing MDPD employees and/or clients about Armored Breach LLC and/or its products.

E. Gifts

Finally, you inquired as to whether, and to what extent, you can provide your invention to your colleagues at MDPD at no cost. Section 2-11.1(e) of the 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 accepting or agreeing 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 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, so long as there is no *quid pro quo* activity that takes place or is anticipated to take place as a result of the gift. *See* RQO 05-119; INQ 20-113; INQ 18-124.

Accordingly, the County Ethics Code would not prohibit you from providing the forcible entry breaching ballistic shield (your invention) at no cost to the County for use by your MDPD colleagues to aid them in the performance of their official duties, but only so long as there is no expectation on your part or on the part of Armored Breach LLC that the provision of your invention for free would result in official action directly or indirectly benefitting you and/or Armored Breach LLC, such as future business with the County or a promotion in the MDPD. *See* INQ 20-113; INQ 18-124. Put plainly, you cannot provide your invention to your MDPD colleagues for free with the aim of inducing the County to then seek future business with you and/or Armored Breach LLC, or to get a promotion at MDPD.

Opinion

Based on the facts presented here and discussed above, neither you nor Armored Breach LLC may contract with MDPD because it is your employing County department, and therefore any contract with it would give rise to a prohibited conflict of interest. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 00-32. However, you and/or Armored Breach LLC may contract with other County departments and with local municipalities and their respective law enforcement agencies because they do not employ you and your duties do not concern them, so long as you adhere to the limitations discussed above regarding such a contract. *See* INQ 21-21; INQ 21-04.

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.

Other conflicts may apply based on directives from MDPD or under state law. Questions regarding possible conflicts based on MDPD directives should be directed to your MDPD supervisor or to the Mayor's Office. 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.