



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: Michael Edwards
Chief Fire Officer
Miami-Dade County Fire Rescue Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-162, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: December 12, 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 your company's participation in Miami-Dade County's Small Business Enterprise ("SBE") Certification Programs and your company's anticipated business with a County contractor.

Facts

You are employed by the Miami-Dade County Fire Rescue Department ("MDFR") as a Chief Fire Officer. You advised that your job responsibilities primarily include supervising multiple fire stations, including rostering and personnel at those stations, as well as responding to the scene of large-scale fire rescue calls. You further advised that your MDFR position does not include any oversight or administration of the County's SBE Certification Programs, nor does it include any procurement or purchasing responsibilities.

You own a Florida for-profit corporation named MKE Growers International, Inc. ("MKE"), which purchases and sells whole and fresh cut fruits and vegetables. You advised that, in addition to owning the business, you are also its President, and your responsibilities primarily include purchasing the raw produce and administration of the company, meaning payroll, policy, and other human resources responsibilities. You advised that you have an Operations Manager who runs MKE's day-to-day operations, as well as a sales staff who handle sales and contract negotiation. You further advised that MKE is seeking to contract with Sodexo, a corporation that is a County

contractor providing food service to the Public Health Trust/Jackson Health Systems.¹ You advised that MKE would also like to apply to participate in the County’s SBE Certification Programs.

Miami-Dade County’s SBE Certification Programs were created for any business entity providing construction, architectural, engineering, goods, services, and aeronautical support services. The SBE Certification Programs are gender and race neutral. The County’s SBE - Goods Certification Program is designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax (“LBT”) Receipt issued for at least one year; (b) must have an actual location in Miami-Dade County and perform a commercially useful function; (c) the personal net worth for each owner cannot exceed \$1.5 million; (d) the last three years’ average gross receipts must not exceed \$8 million, except manufacturers whose total number of employees cannot exceed 100 and wholesalers whose total number of employees cannot exceed fifty; (e) business license holder and qualifier (if applicable) must own at least ten percent of the applicant’s issued stocks or otherwise have at least a ten percent ownership interest; and, (f) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time. SBE Certification is valid for a three-year period.²

Issue

Whether there is a prohibited conflict of interest that would prevent MKE Growers International, Inc., your privately owned business, from participating in the County’s SBE Certification Programs or from contracting with a County contractor.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Outside Employment

Work conducted by you for MKE constitutes outside employment, as defined by the County Ethics Code. *See* RQO 17-03 (citing RQO 16-01). 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.” Section 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.”

¹ SodexoMAGIC, LLC is a Florida limited liability company and a registered County vendor. SodexoMAGIC is a food and facilities management provider founded in 2006 as a partnership between Sodexo and former National Basketball Association (“NBA”) player Earvin “Magic” Johnson. *See About Us*, SODEXOMAGIC, <https://www.sodexomagic.com/about-us.html> (last visited Dec. 7, 2022).

² *See Goods and Services*, SMALL BUSINESS CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited Dec. 7, 2022).

Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his 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.

Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that you engage in through MKE would impair your independence of judgment in the performance of your County duties as a Chief Fire Officer with MDFR. *See* RQO 17-03 (citing RQO 16-01).

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 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 permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director. Given that you are a full-time employee, you must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis.**³

B. Contracting with the County and/or a County Contractor

Regarding MKE's participation in the County's SBE Certification Programs, upon obtaining permission to engage in outside employment with MKE, then MKE **may participate in the County's SBE Certification Programs**. However, it may do so only so long as MDFR is not involved in any way in processing, administering, overseeing, or enforcing the SBE Certification Programs. *See* INQ 22-157 (County employee's company may participate in County's SBE Certification Program so long as his employing County department does not enforce, oversee, or administer the SBE Certification Programs). This includes the condition that you may not participate in determining or awarding the SBE Certification. Additionally, none of your job responsibilities or job descriptions may require you to be involved in the SBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

Regarding contracting with a County contractor, generally, sections 2-11.1(c) and (d) of the County Ethics Code only restrict the ability of County employees to contract with the County, and permit County employees to transact business with the County only if the contract does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with

³ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

enforcing or overseeing the contract. *See* County Ethics Code §§ 2-11.1(c), (d).⁴ Additionally, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. *See* County Ethics Code § 2-11.1(c)(2). Here, you have indicated that you are seeking to contract with Sodexo, a County contractor, and not directly with the County itself. Thus, **as long as you are not involved in the negotiation, enforcement, or oversight of the contract between the County and Sodexo, there are no prohibited conflicts of interest** pursuant to sections 2-11.1(c) and (d) of the County Ethics Code that would prevent MKE from contracting with Sodexo. *See* INQ 22-112 (finding no conflict of interest when a County employee contracted with a County contractor for advertising space in County parking garages because the County employee was not involved in the negotiation, enforcement, or oversight of the contract between the County and the County contractor).⁵

C. Lobbying

You may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about MKE's application to participate in County's SBE Certification Programs. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to MKE's application to, and ultimate participation in, the County's SBE Certification Programs, or to any other County certification programs to which you or MKE are applying.

⁴ *But see* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or 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, any agency of which he or she is an officer or employee

⁵ In discussing your inquiry with you, you also inquired as to whether MKE may contract with the Miami-Dade County Public Schools ("M-DCPS"). M-DCPS is not a County entity; rather, it is an independent entity created by State law. *See* Florida Statutes §§ 1001.30-1001.33. Because the County Ethics Code is limited in applicability to County and municipal officials and personnel, **the County Ethics Code would not restrict your ability, or the ability of MKE, to contract with M-DCPS.** *See* County Ethics Code § 2-11.1(a); INQ 20-65 (an M-DCPS employee may contract with the County without giving rise to a prohibited conflict of interest because M-DCPS is not within the jurisdiction of the County Ethics Code).

Opinion

Based on the facts presented here and discussed above, MKE's participation in Miami-Dade County's Small Business Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. Additionally, MKE's anticipated business with Sodexo, a County contractor, also does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above.

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/>.

Please submit this memorandum to the Small Business Development Division of the Internal Services Department ("ISD"). The Commission on Ethics does not submit it on your behalf.

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.