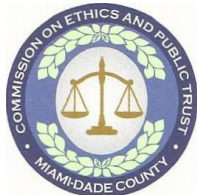


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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ADVOCATE

December 20, 2022

Honorable Javier Souto  
2620 Southwest 115<sup>th</sup> Avenue  
Miami, Florida 33136

Re: INQ 2022-167, Post-County Service Prohibitions, Section 2-11.1(q), County Ethics Code

Dear Mr. Souto:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and requesting our guidance regarding limitations on your interaction with Miami-Dade County, within two years of the end of your term as a County Commissioner.

### Facts:

You have completed your term as an elected County Commissioner.

During your career as an elected County official, you had a policy interest in the expansion of PortMiami's cargo business portfolio. You have shared your belief that expanded commercial cargo creates local jobs and enriches the local economy. Consequently, during your elected service, on behalf of the County, you engaged with foreign private business owners and leaders, and encouraged them to utilize the seaport as their point for importation of coffee and other agricultural products. You have commented that while the Port of New Orleans has been and may still be the largest importer of coffee in the nation, that PortMiami is a viable competitor and natural alternative to that port.

You are considering future volunteer service on behalf of the County in continuing support of the expansion of its seaport cargo business, with a focus on the importation of coffee and other agricultural products.

### Issue:

Whether a former County Commissioner within two years of the end of his term may volunteer his service on behalf of the County in support of the expansion of its seaport cargo business, with a focus on the importation of coffee and other agricultural products.

Analysis:

Section 2-11.1(q), the “Two-Year Rule” found in the Miami-Dade County Ethics Code, prohibits a person who has served as an elected County official from “lobbying” the County for a period of two years following separation.

Specifically, the relevant section of that rule prohibits a former elected official, for a period of two years after his or her County service has ceased from:

...lobby[ing] any county officer, department personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid request for ruling, or other determination, contract, claim, controversy, charge accusation, arrest, or other particular subject matter in which Miami-Dade Count or one of its agencies or instrumentalities is a part or has nay interest whatever, direct or indirect.

The post-service lobbying activity prohibitions contained in subsection (q) of the Ethics Code are more expansive than those found under the general lobbying registration ordinance in Section 2-11.1(s) of the Ethics Code.<sup>1</sup>

Whereas the County’s lobbying ordinance at subsection (s) has previously been interpreted by the Ethics Commission as prohibiting “lobbying” on matters that will foreseeably be acted upon by the County Commission, the Mayor, any County board or committee, or specifically defined County personnel, the Two-Year Rule prohibits the intent to influence official action or decisions, regardless of whether they may foreseeably be heard or considered by commission board or committee, that may be made at the sole discretion of *any* County personnel. See RQO 12-09; RQO 13-07.

Also, this prohibition applies to any activity where the former official would be publicly identified as part of lobbying team. *Mere attendance* as part of a lobbying team may run afoul of the prohibition. See RQO 04-34 (citing RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team).

The former official is however allowed under subsection (q) of the Ethics Code to share institutional knowledge regarding County procedures with other persons, including employers or clients, and to provide guidance regarding interactions with the County. See INQ 20-63. Direct meetings and contacts between the official and County personnel are also permissible as long as there is no advocacy involved in the interactions, the official is not seeking to influence County personnel, and again, is not part of a lobbying team. See INQ 20-63.

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<sup>1</sup> The provisions of Subsection (q) do not apply to officials, departmental personnel or employees who become employed by governmental entities, 501(c)(3) non-profit entities or educational institutions or entities, and who lobby on behalf of such entities in their official capacities.

While the Ethics Commission is without jurisdiction to interpret state law, there are similar prohibitions on local officials from representing another for compensation before their former government body for a period of two years following vacation of office. <sup>2</sup>

Also worth noting, and again outside of this agency's authority to interpret or opine on, if a former official is in office at the end of the 2022 calendar year, or if he or she is subsequently elected to another public office, then effective December 31, 2022, as a result of a 2018 amendment to the state constitution, the official would be prohibited from lobbying both *during* public service and for a *six-year period following* vacation of public office. The prohibitions are very expansive and address lobbying on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision.

Guidance regarding the interpretation of the constitutional amendment or the enabling legislation in Section 112.3121, Florida Statutes, should be provided by the Florida Commission on Ethics. Upon recent inquiry, the Florida Commission on Ethics has not yet provided interpretation of these new provisions contained in Chapter 112, Florida Statutes, but may do so after the effective date of December 31, 2022.

Opinion:

You may share insights regarding County processes and practices gained over your many years of public service with foreign private business owners and leaders and encourage them to utilize PortMiami as their point for importation of coffee and other agricultural products. You may do the same in support of your activities to expand the seaport's cargo business more generally.

Of course, you may continue to champion the County's seaport and the expansion of its cargo business portfolio with a focus on the importation of coffee and other agricultural products. As part of these activities, you may consult with and partner with County seaport officials. Your service as a seaport cargo business ambassador would not implicate any provisions of the County Ethics Code.

You must solely be cautious and avoid any scenario where you are advocating on behalf of third parties vis-à-vis Miami-Dade County as the post-public service prohibitions on lobbying the County are expansive and you should not engage in any action that might be perceived as advocating or seeking to influence County elected officials, board members, or personnel, nor should you be part of, or identified as part of, a team that is lobbying the County, as this this would be a violation of the County's Two-Year rule.

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<sup>2</sup> See Section 112.313(14), F.S. (A person who has been elected to any county office may not personally represent another person or entity for compensation before the government body of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection, "government body or agency" of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.)

You may not attempt to persuade any County elected official, departmental personnel, or employee, whether in person or by written communication, to take a particular course of action in any transaction as defined in the above referenced Subsection (q). These actions are considered lobbying and are prohibited. *See* RQO 02-139.

This agency remains available to afford you with guidance regarding the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and its application to your post-public service activities.

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 only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

We appreciate your consulting with the Commission. If the facts associated with your inquiry change, please contact us for additional guidance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jose J. Arrojo".

Jose J. Arrojo  
Executive Director

Copies:

COE Legal Staff  
Onaivys Diaz, Executive Assistant