



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Mark Watson
Firefighter
Miami-Dade Fire Rescue Department

Danny Cardeso
Fire Division Chief
Miami-Dade Fire Rescue Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-23, Sections 2-11.1(j), Conflicting Employment Prohibited.

DATE: February 22, 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 in Mr. Mark Watson's outside employment.

Facts

An inquiry has been submitted concerning whether a conflict of interest would exist were Mr. Watson, an employee of the Miami-Dade County Fire Rescue Department ("MDFR"), to continue to engage in outside employment as the owner of Gulfstream Petroleum Services, Inc. ("GPS"). GPS is a Florida corporation that installs and maintains large fuel tanks and fueling stations. As the owner and operator of GPS, Mr. Watson prepares bids, handles the contracts in which the company enters, and otherwise manages company payroll, permitting, and insurance.

Mr. Watson is currently employed by MDFR as a firefighter/paramedic. His job duties include responding to all emergency calls to which he is dispatched, as well as checking out the truck and equipment and participating in morning station duties.

Mr. Watson advises that GPS is a County vendor.¹ He stated that GPS is currently doing work for the Miami-Dade Department of Water and Sewer, and that it recently bid on work with the Miami-Dade Aviation Department. Mr. Watson advised that GPS never bids on or does work for MDRF.

Mr. Watson further advises that he conducts his GPS-related responsibilities on his days off from his position with MDRF. He advises that, as part of his outside employment, he is not and will not be required to encounter the same or similar people or entities as in his County position. He stated that his proposed outside employment requires him to interact with County employees, but only insofar as GPS bids on and performs contracts for County departments other than MDRF. He does not appear before any County boards on behalf of GPS. He advises that no County resources are or will be used for his proposed outside employment. He further advises that, as part of his County position, he does not have access to non-public information that is, or could be, relevant to his outside employment. Finally, he does not interact with or supervise any County vendors as part of his County position.

Issue

Whether any prohibited conflict of interest may exist between Mr. Watson's County employment and his outside employment as the owner of GPS, a Florida corporation.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") prohibits a County employee 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); *see also* section 2-11.1(k). 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."

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. 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* RQO 16-02; RQO 00-10; INQ 13-28.

¹ In December 2011, Mr. Watson sought and obtained an ethics opinion regarding contracting with the County through GPS. *See* INQ 11-194. **The issues discussed and the opinion given in INQ 11-194 remain in effect insofar as the facts associated with that inquiry also remain the same. If those facts change you must seek another opinion from the Commission on Ethics.**

Based on the information provided to us at this time, it appears to be unlikely that Mr. Watson's outside employment would impair his independence of judgment in the performance of his County duties as a firefighter with MDRF. This is because there is no overlap between his public duties and his outside employment: his outside employment is and will be performed outside of his County hours; he does not and will not come into contact with the same persons or entities involved in his County work; he does not and will not use the same resources in his outside employment as used in his County work; and, he does not and will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment. *See* RQO 17-01. Furthermore, he does not and will not appear before any County boards as part of his outside employment with GPS; Mr. Watson stated that GPS is part of a pre-approved pool of vendors to provide fuel-related services, and that GPS submits written bids to perform those services. *See* RQO 17-01; RQO 16-02.

Opinion

Based on the facts presented here and discussed above, Mr. Watson would not have a conflict of interest in his proposed outside employment as the owner of GPS.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Mr. Watson's permission to engage in his outside employment:

- He may not engage in activities that relate in any way to his outside employment during his scheduled work hours (including phone calls, text messages, e-mails, or other communications) and he may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with his outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 5-5; AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- He may not exploit his County position to secure special privileges or exemptions for himself or GPS. *See* County Ethics Code § 2-11.1(g).
- He may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment to derive a personal benefit, or for the benefit of GPS. *See* County Ethics Code § 2-11.1(h).
- He may not contract, either individually or through GPS, directly or indirectly, with MDRF. *See* County Ethics Code §§ 2-11.1 (c), (n).
- He may not represent GPS before any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of his potential activities as the owner of GPS, it is important to note that he would be prohibited from doing any such activities on behalf of GPS or its clients.
- He must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director, and he must file an

Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* County Ethics Code § 2-11.1(k)(2).

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 MDFR or under state law. Questions regarding possible conflicts based on MDFR directives should be directed to MDFR or 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.